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AND  
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# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—“*Still attended at your service.*”—*Shakespeare.*

SATURDAY, NOVEMBER 4, 1854.

### STATE AND PROSPECTS OF THE SECOND BRANCH OF THE PROFESSION.

ON the commencement of another Legal Year, with the opening of a new Volume, it may be deemed not inappropriate to take a general view of the present state of our branch of the Profession, and endeavour to form some estimate of its future prospects.

The recent General Meeting at Leeds of a large number of Attorneys and Solicitors from various parts of the country, as well as the metropolis, has furnished us with several topics of observation of great importance, and we have a few others to suggest for consideration, derived from other sources, or our own reflection.

In regard to the present state of the practice or business of Attorneys and Solicitors, it cannot be disputed that it has undergone several *injurious changes* within the last 20 years or more. In the department of *Conveyancing*, the diminution of the emoluments of Solicitors has not been so great as in other branches, but still it has been very considerable. For instance, by the abolition of fines and recoveries, the assignment of outstanding terms, the lease for a year,<sup>1</sup> and other changes connected with the Law of Real Property, the pecuniary interests of the Profession have been

materially affected. Further and greater changes in this department are contemplated, to which we shall hereafter advert.

The most sweeping and conspicuous alterations which have been effected since Lord Brougham's great speech on Law Reform, have been in the jurisdiction and course of proceeding in the *Common Law Courts*. The forms of special original writs, declarations, pleas, paper-books, and frivolous demurrers, which delayed the suitors and increased expense, have been altogether annihilated, and therewith all the large profits, easily earned, which accompanied those proceedings. In like manner the abolition of Arrest on Mesne Process, destroyed another large source both of delay and expense. Our insatiable law reformers, not content with these achievements, proceeded to take away, root and branch, all except a few actions from the Superior Courts not exceeding 20*l.*; and lastly, these “small debts” were extended concurrently to 50*l.* Nor let it be overlooked in this catalogue, that whilst the Attorneys were thus deprived (without compensation) of a large part of their practice, they were also excluded from filling the petty Judgeships of the new Small Debt Courts, although up to that time they had satisfactorily filled the office of Assessors to the Commissioners of the Courts of Request, which were then displaced by the new County Courts.

Next, in its effect on the Attorneys, came the never ending changes in the law and practice of *Bankruptcy*. The Solicitors in town and country who had been Commissioners, along with members of the Bar, were pensioned off, and all future Solicitors excluded from the new Commissions. Official assignees and messengers were appointed

<sup>1</sup> It should not be forgotten that whilst about 50,000*l.* a year was taken from the Solicitors by the Act for dispensing with leases for a year, the then Chancellor of the Exchequer retained the stamp duty. The present Chancellor of the Exchequer has consistently abolished this outrageous tax on a deed that no longer existed.

to perform the greater part of the former duties of Solicitors; large fees were exacted, and the result has been the diminution of business to such an amount, that the supporters of the system are at their wits' end to find means for defraying the expense of the costly establishment.

Come we now to the Court of *Chancery*,—time out of mind the great stalking-horse of reform. Here we have abolished offices at the expense, well-nigh, of half a million of money,—bowed out the ancient Masters in *Chancery*;—enabled the Court to decide knotty points off-hand without the formality, delay, or expense of pleadings;—to examine witnesses *visâ voce*;—and take accounts in an administration suit as rapidly as the most skilful accountant. The result, however, of all these “improvements” is, that the Solicitors who conscientiously discharge their duty are most inadequately remunerated, and the strongest temptations are held out to the needy or lower class of practitioners who, if so minded, can easily protract business and increase expense, and thus secure a sufficient return for their labour and responsibility. This state of things is not only unjust to the skilful and respectable practitioner, but injurious in its consequences to the suitor. Of this, however, more hereafter: we are here only indicating the consequences of the present defective system.<sup>3</sup>

Such being the result of the various law reforms on the usual and ordinary branches of business, we must not lose sight of the extraordinary sources of income which have arisen in favour of a fortunate but small class of the Profession. We have, indeed, heard it urged, in answer to the complaints of Solicitors, that new and extensive branches of business have been produced by the progressive changes which have taken place in modern times. It is, indeed, not improbable that the amount of costs paid to lawyers within the last few years is as much as at any former period. This conjecture takes into account the vast expenditure connected with all the railways of the country; but let it be recollected that these are in the hands of a small number of our brethren, and afford no compensation to 99 men out of every 100 who have suffered by the diminution of all other kinds of professional employment.

From these effects of Law Reform on the

welfare of the Profession, so far as it has already extended, let us turn to the consideration of some further changes which are in contemplation.

1st. *The Registration of Titles*.—The various former projects of entering every deed or instrument relating to land on a public register, appears to be generally abandoned, and a new proposition is brought forward, limited to the registration of titles. The register, as we understand the plan, will contain merely a description of the property, and the name of the owner of the legal estate. The expense of this entry will be small, but until a sufficient length of time has elapsed to constitute a title by possession against every claimant, the costs of the investigation of the title must remain as at present. It is expected, however, we understand, that Parliament will authorise a purchaser to call upon the registrar to investigate the title, and notice being given to all known parties who have any interest in the property, the registrar will determine the sufficiency of the title, which being recorded shall be conclusive against everybody,—reserving only a right to compensation to a claimant who has not received notice; but enabling the purchaser absolutely to hold the estate.

There can be no doubt that this modified plan of registration, if adopted, will be carried into effect in the metropolis; and it will therefore soon be the duty of our provincial brethren to consider whether their former decided objection to a metropolitan registry of all deeds, is to any and what extent affected by the change in the nature of the registration. For our parts, we should say, that if the Legislature be determined to try the experiment of a register of titles, they should confine it for the present to Middlesex and Yorkshire, substituting the new for the present defective registers. In those counties, including large agricultural districts as well as large cities and towns, there would be ample room and verge for the experiment. It must be admitted that the expected advantage is remote, and therefore there need be no dangerous haste for a few years,—especially as we know that many who are in favour of the plan, conceive that it cannot be safely carried into effect without a *public map*; and the limited experiment we suggest would set that question at rest.

2nd. The next projected change has for its object the further extension of the *County Courts*. The “small end of the wedge” of these Small Debt Courts having

<sup>3</sup> During the last Volume, we have often noticed the subject of the *remuneration* of Solicitors, and shall not fail to continue the discussion.

been inserted in our judicial system, there seems to be no end of the struggles to overthrow the ancient Courts of Westminster, and drive out our great lawyers and forensic advocates. The original pretence of establishing "poor men's Courts" is abandoned, and dignified men having displaced the attorneys from the old County and Borough Courts and Courts of Conscience, they seem ashamed of the humble duties they have to perform, and desire to enlarge the powers and elevate the character of their tribunals to suit the estimate of their own importance. If matters proceed much further, it will become necessary to restore the former Courts of Request to adjudicate upon petty debts and claims. The learned Queen's Counsel and Serjeants-at-Law who have accepted these minor judgeships are looking forward (as one of them announces) to future promotion to the Bench of the Superior Courts, and consequently will despise the petty claims of the County Courts and the adjustment of the small instalments by which they are to be satisfied. The design now appears to be,—1st, to establish a Court of Appeal from the County Courts, consisting of County Court Judges instead of the Judges of the Superior Courts:—thus enabling them finally to rule the law in all the local Courts; 2nd, to render the County Court Appeal Judges eligible for promotion to the Bench of the Superior Courts; and 3rd, to transfer to the County Courts a large part of the business of the Court of Chancery,—superseding to a great extent the Chief Clerks of the Equity Judges, and setting at naught the improvements recently effected by the Legislature in simplifying the practice, expediting the proceedings, and diminishing the expense of suits in Chancery by an admirable summary procedure.

3rd. *Joint-Stock Trust Companies*.—We understand that the project for establishing these companies will be again brought forward. We shall watch the notices which, we presume, will be given in the course of the present month, and apprise our readers thereof. We must reiterate our opinion, that the measure is wholly uncalled for, and will be as injurious to the client as to the Solicitor. Private family trusts ought not to be placed in the hands of a board of directors. The alleged difficulty of procuring good trustees is imaginary. Persons of property always have friends ready to assist them on such occasions, and the instances of breach of trust are few and far between, and probably less numerous than

would be the defalcations in public companies. It may be true that many or most of them will be trustworthy, and so are the vast majority of executors and trustees. And if we wanted to point out a department of professional practice in which Solicitors are of the greatest possible service to their clients:—saving them from misfortune or the mismanagement of their property; advising them in difficulties; extricating them from embarrassment; protecting them from fraud; and rescuing their families from improvidence,—we should refer to that large and eminently respectable class of Solicitors who are engaged in conveyancing and general business relating to the execution of trusts under marriage settlements and wills, and with whom the secrets of families repose with unfailing security. The joint-stock scheme, if it were successful, would deprive the client and his family of their confidential advisers, and place the management of the most delicate affairs and important private arrangements in the hands of comparative strangers. Instead of this large branch of legal business being distributed, as it is, amongst a thousand Solicitors, each perfectly acquainted with all the interests of the families of his clients, it would be transferred to a few fortunate individuals who had influence enough to procure a good board of directors.

From these considerations of anticipated alteration in the course of professional practice, we turn to some of the *grievances* already existing, and which were forcibly noticed at the recent meeting at Leeds.

Amongst these may be prominently placed the loss of various *offices of honour and emolument* which were formerly held either solely by Attorneys and Solicitors, or to which they as well as Barristers were equally eligible. Of many of these they have been deprived by recent legislation, and others are almost invariably conferred on members of the over-crowded Bar. As instances of this kind may be mentioned, Commissionerships in Bankruptcy, County Court Judgeships, Examiners in Chancery, Government Solicitorships, and various other appointments, for many of which "Barristers of seven years' standing" are declared by Act of Parliament alone competent. Such has been the power and influence of the Bar, that the Legislature has deprived the Judges of the power of selecting Attorneys who might, above all other persons, have been the most competent to discharge the duties required.

Another topic at the Aggregate Meeting was, the large share of unpopularity in which the Attorneys are held by the Press. We cannot say that the "briefless Barrister" escapes altogether the ill-natured wit and vituperation of the "fourth estate" of the realm, but undoubtedly the larger share falls on the Attorney. The "pens of the ready writers" of the Press are held by a large number of gentlemen, whom, under our vicious system of legal education, the indolent Benchers of the Inns of Court call unexamined to the degree of Barrister-at-Law. The proprietors of newspapers fancy that members of the Bar of England must necessarily be possessed, not only of the wisdom and acuteness which belongs to the eminent advocate, but that they are imbued with the classical learning and scientific knowledge which should precede the study of the law. And although they do not always spare their brother Barristers, it is manifest that, whenever occasion offers, or can be created, the Attorney becomes the object of unparagoned aspersion. His motives are set down to be the worst: he is always seeking to pervert justice for the sake of his own gain; he institutes a prosecution for the sake of his costs, where there is no real ground of accusation; or abandons a just complaint, either because it is unprofitable or a bribe directly or indirectly is offered for his acceptance!

In order to remedy this state of things, it was suggested by an influential and much-respected speaker at the Leeds Meeting that a constant, systematic, and zealous counteraction of the aspersions in the Press should be effected through the medium of the Press itself; and we concur entirely in the necessity and justice of adopting the measures then recommended. We believe, if the Attorneys would take the trouble to collect and state the facts and circumstances within their knowledge, there are many public journals which would do them the justice to bring their defence ably and impartially before the public. It is supposed by a writer in the *Law Times*, in an article ably written, but somewhat inconsistent with its general views, that it would be a waste of money and toil to attempt the advocacy of lawyers. He supposes the laudation would not be read, or if read would be ridiculed; and that it would defeat its object and increase the public prejudice. It is assumed that a new daily paper is contemplated, on which 50,000*l.* might be thrown away;—that it would be opposed by the rest of the Press and

laughed out of Court by Punch! As a flattering example the learned writer refers to the *Morning Advertiser*, which is in the interest of the inkeepers, but whose praises have no effect on the public. Indeed, as a lawyer's paper, we are told, it would be altogether avoided, and we should not obtain a hearing. Finally, we should "leave well alone."

Now, it should be recollected, that of all subjects that interest the public mind, none can exceed those which relate to the administration of justice. Trials, civil and criminal, stand next in the general estimation to questions of peace and war, or the excitements of parliamentary reform. Leading articles against lawyers, it will not be denied, are read with extreme avidity; and we cannot doubt that clear, concise, and able statements of facts, with apt illustrations, and just and forcible reasonings, on matters involving the character and integrity of the Profession, would also be read with equal attention.

Let it be remembered that the Clerical Profession is amply represented, not only in various periodical journals, expressly devoted to its interests, but that more than one of the public daily newspapers are ever ready to advocate its interests and uphold its character. And so of other Professions who possess their weekly, monthly, and quarterly representatives in the Press. The Profession might, indeed, for the most part stand on its integrity, utility, and character, but in this age, when so much depends on the influence of public opinion, we agree with our esteemed friend at Leeds, "that the claims of the Profession should be made known to the public through that powerful organ, the Press,—demonstrating the interest which the public has in supporting those claims, because the interests of the Profession and those of the Public are completely identical."

We agree also, that the members of the Profession might be usefully assembled more frequently than at present, by general meetings in London and the Provinces, at which subjects interesting to the general body might be brought forward by concisely written papers, followed by discussions thereon, as well as by formal resolutions and more elaborate speeches or lectures, after the manner of the British Associations.

We deem it also for the welfare of the general body, that there should be a cordial union of town and country Solicitors. We have often noticed the attempts which have been made to separate the interests of the

London and Provincial Attorneys. It was one of the objects of the Metropolitan and Provincial Law Association to counteract this impression, and to a great extent it has succeeded. This important means of strength should be still further cultivated. We should like to see a few, at least, of the leading country Solicitors in different parts of the empire, associated with the London members in the Council of the Incorporated Law Society, so that they might on important occasions have a voice in the deliberations of the governing body, either by personal attendance or written communication. We have some reason to believe that this suggestion will be considered when a fit opportunity occurs.

We would here note also the necessity of communications being made to the proper quarter, by Solicitors throughout the kingdom, of instances, on the one hand, of the honour and integrity of members of the Profession, and on the other, of explanations refuting the complaints which are brought forward against them.

Another means of improving the Profession, and keeping pace with the continual progress of other classes of the community, is to be found in extending the Education of Lawyers to subjects of classical literature and the useful sciences, in addition to a sound legal education. Connected with this view, and the work of uniting and strengthening the second branch of the Profession, we would again advert to a subject recently submitted to our readers, namely, the union of the ancient *Inns of Chancery* with the Incorporated Law Society for the purpose of promoting the general improvement of the Attorneys and Solicitors, and especially of providing increased means both for the general and legal education of Articled Clerks and facilitating the discharge of the duties of the Practitioners. We understand that suggestions are under consideration with reference to this important means of improvement,—having regard especially to the favourable opportunity afforded of bringing the subject under the notice of the Commissioners of Inquiry into the Inns of Court and Chancery.

In considering the importance of increasing the facilities for the despatch of the business, in these days of shortening distance and saving time, we may notice the proposed erection of new Courts and Offices in the neighbourhood of the Inns of Court and Chancery, in the very centre of the metropolis, instead of the south-west corner of Westminster. This valuable improve-

ment will, no doubt, be again urged forward.

We must not let this opportunity pass of noticing the intention of several influential solicitors to found a *Benevolent Institution* for the relief of aged and indigent Attorneys. The prospectus will shortly be submitted to the Profession, under the auspices of the Incorporated Law Society; and doubtless, there is occasion more than ever for the wealthy and charitable to come forward in behalf of their unfortunate brethren, many of whom have been depressed or ruined by the changes effected in recent times in the various departments of legal practice.

We have but briefly opened some of these important topics, and invite our correspondents to communicate their sentiments thereon and the valuable information they possess.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### EPISCOPAL AND CAPITULAR ESTATES' MANAGEMENT, 1854.

17 & 18 VICT. c. 116.

14 & 15 Vict. c. 104, continued; s. 1.

On sale or exchange of part of lands, &c. comprised in any lease, rent may be apportioned; s. 2.

Trustees of will or settlement may raise money for enfranchisement; s. 3.

Arbitrators may be named; s. 4.

How copyholder's right of renewal to be ascertained; s. 5.

Provision relating to apportionment of proceeds of sales; s. 6.

Like provision in respect of purchases and exchanges; s. 7.

Provisions respecting local claim on tithes; s. 8.

References to arbitration to determine value of lands vested or to be vested in Ecclesiastical Commissioners; s. 9.

Ecclesiastical Commissioners to state like particulars as Church Estate Commissioners; s. 10.

Basis of report of 1850 may be taken; s. 11.

How computations on the duration of lives are to be calculated; s. 12.

Interpretation; s. 13.

The following are the Title and Sections of the Act:—

An act to continue and amend an Act to facilitate the Management and Improvement of Episcopal and Capitular Estates in England. [11th August, 1854.]

Whereas the Act of the 14 & 15 Vict. c. 104, was limited to three years from the end of the then Session of Parliament, and it is expedient to continue and amend the same Act: Be it therefore enacted, as follows:—

1. The said Act, as amended by this Act, shall continue in force for two years from the end of the present Session of Parliament.

2. The powers and provisions contained in the second section of the said Act shall extend to all cases in which, on the sale, exchange, or enfranchisement, under the authority of the said Act or of this Act, of a part only of any lands or other hereditaments comprised in any lease or copy of Court Roll, the church estates Commissioners may deem it expedient to apportion the rent reserved by or payable under the lease or grant to the ecclesiastical corporation by whom such lease or grant may have been made.

3. In any case in which the legal estate and interest under any lease or grant made by any such ecclesiastical corporation may be vested in any person or persons in trust for any other person or persons, according to the limitations of any will or settlement, where such will or settlement contains a direction or power to such trustees to raise money for the purpose of procuring a renewal of such lease or grant, it shall be lawful for the same trustees to raise money for the purpose of purchasing the reversion of or otherwise enfranchising the property comprised in such lease or grant, in the same manner, and subject to the same conditions, *mutatis mutandis*, so far as the same may be applicable to the case, as may be specified in such will or settlement with reference to the raising of money for the purpose of renewing such lease or grant.

4. In every case where a treaty shall have been entered into, under the provisions of this Act or of the said recited Act, for the sale, purchase, or exchange of any episcopal or caputular estate in England, or of any interest in such estate, it shall be lawful, by the consent of both parties to such treaty, and with the approbation of the Church Estates' Commissioners, to refer to arbitration the finding of the annual value of such estate, and of the value of the fee simple thereof, or either of such values, subject to the exceptions and reservations, if any, to be excepted and reserved thereout, and that such finding shall be adopted in computing the terms of such sale, purchase, or exchange, regard being had, in the final settlement of such terms in every such case, to the just and reasonable claims of the present holders of land under lease or otherwise, arising from the long-continued practice of renewal, and that in every such case one arbitrator shall be appointed by the Church Estates' Commissioners, and one by the lessee or intending purchaser, and the two arbitrators so appointed shall, before they proceed in the matter referred to them, appoint an umpire or third arbitrator, and the proceedings upon such arbitration shall be conducted in like manner, and subject to the same rules and

enactments, as upon a reference made by consent upon a rule of Court or Judge's order: provided always, that it shall be lawful for the same parties to appoint one and the same person to act as sole arbitrator; and in such case the valuations, acts, and award of such arbitrator shall have the same effect as valuations, acts, and award of the arbitrators and umpire under the provisions herein contained: and in every case the costs of such arbitration and award shall be in the discretion of the said arbitrators or umpire, as the case may be.

5. Notwithstanding anything to the contrary contained in or to be implied from the said recited Act, or in the "Copyhold Act, 1852," or in an Act of the 16 & 17 Vict., intitled "An Act to explain and amend the Copyhold Acts," whenever a right of renewal of any lands held for a life or lives or for years by copy of Court Roll from or under any ecclesiastical corporation shall be disputed by such ecclesiastical corporation or by the Church Estates' Commissioners, or whenever the person or persons claiming to be interested in any such lands shall be desirous of having the right of renewal decided by a competent tribunal, then and in either of the said cases it shall be lawful for such person or persons to cause an action to be brought in any of her Majesty's Superior Courts of Law at Westminster, in which action such person or persons shall be the plaintiff or plaintiffs, and the Church Estates' Commissioners, together with the ecclesiastical corporation from or under whom such copyhold or customary lands shall be held, shall be the defendants, and in which action the plaintiff or plaintiffs shall deliver a feigned issue whereby such disputed right may be tried, and shall proceed to a trial at law of such issue at the Sittings after the Term or at the assizes then next or next but one after such action shall have been commenced, to be holden for the county within which the lands, or the greater part thereof, are situated, with liberty, nevertheless, for the Court in which the same shall have been commenced, or any judge of any one of her Majesty's Courts of Law at Westminster, to extend the time for going to trial therein, or to direct the trial to be in another county, if it shall seem fit to such Court or Judge so to do, and the defendants in any such action shall enter an appearance thereto, and accept such issue; but in case the parties shall differ as to the form of such issue, or in case the defendants shall fail to enter such appearance or accept such issue, then the same shall be settled under the direction of the Court in which the action shall be brought, or by any Judge of one of her Majesty's Courts of Law at Westminster, and the plaintiff or plaintiffs may proceed thereon in like manner as if the defendants had appeared and accepted such issue; and the parties in such action shall produce to each other, their respective attorneys or counsel, at such time as any Judge may order, before trial, and also to the Court and jury, upon the trial of any such issue, all books, deeds, court rolls, papers, and writings,

terriers, maps, plans, and surveys, relating to the matters in issue, in their respective custody or power; and it shall be lawful for the Judge by whom any such action shall be tried, if he shall think fit, to direct the jury to find a verdict, subject to the opinion of the Court upon a special case; and the verdict which shall be given in any such action, or the judgment of the Court upon the case subject to which the same may be given, shall be final and binding upon all parties thereto, unless the Court wherein such action shall be brought shall set aside such verdict, and order a new trial to be had therein, which it shall be lawful for the said Court to do if it shall see fit: Provided always, that after such verdict given, and not set aside by the Court, or after such decision of the Court, the said ecclesiastical corporation and the Church Estates' Commissioners shall be bound by such verdict or decision; and the costs of every action, and of obtaining a decision thereon, shall be in the discretion of the Court in or by which the same shall be decided, which may order the same to be taxed by the proper officer of the Court, and the like execution may be had for the same as if such costs had been recovered upon a judgment of record of the said Court: provided also, that in every case in which the costs or any part of the costs of or incident to any action to be brought under the provisions of this Act shall become payable by the defendant in such action, it shall be lawful for the Church Estates' Commissioners, and they are hereby required, to pay such costs out of any surplus moneys coming or which have come or may come to their hands in respect of the estates of such corporation, under the provisions of the said recited Act or this Act.

6. The provisions contained in the sixth section of the said Act, relative to the investment and application of the moneys which are to be paid into the Bank of England as thereby directed, shall be subject to the following provisions; that is to say, the provisions contained in the eighth section of the said Act which direct the Church Estates' Commissioners to require certain payments to be made to them by or on behalf of persons being ecclesiastical corporations sole or members of the ecclesiastical corporation aggregate shall be extended so as to authorise and require the same Commissioners to apportion every sum of money paid or to be paid into the Bank of England under the provisions of the said Act or of this Act so as to set apart for the permanent endowment of such corporation sole or aggregate a share of such sum of money sufficient to secure to such corporation a permanent net income equal to that which, if the said Act or this Act had not been passed, would have been received by such corporation from the property by the enfranchisement whereof such money was produced; and the Church Estates' Commissioners shall pay over the remainder of such sum of money to the common fund of the Ecclesiastical Commissioners for England.

7. The foregoing provisions relative to the

apportionment of moneys between the Church Estates' Commissioners and ecclesiastical corporations, and to the application thereof, shall be construed to relate to all lands and other hereditaments, and to every estate or interest therein, which may have been or which may be acquired by any ecclesiastical corporation by purchase or exchange under the provisions of the said recited Act, so as to authorise the last-mentioned Commissioners to require the payment to them by the ecclesiastical corporation primarily interested in such lands or hereditaments of a sum of money equivalent to the surplus share thereof.

8. The proviso contained in the first section of the said recited Act, with reference to the sale or exchange of tithes or tithe rentcharges, or land or hereditaments allotted or assigned in lieu of tithes, shall be and the same is hereby repealed; and all the moneys so paid or to be paid over to the Ecclesiastical Commissioners for England under the foregoing provision, which may have been produced by the sale, purchase, or exchange of tithes or tithe rentcharges, or land or hereditaments assigned or allotted in lieu of tithes, which formed part of the endowment of any ecclesiastical corporation prior to the passing of the said Act, shall be subject to the provisions relating to local claims which are contained in the 67th section of the Act passed in the 3 & 4 Vict. c. 113; and in every case in which any money shall as aforesaid be paid over to the Ecclesiastical Commissioners for England in respect of surplus, the last-mentioned Commissioners shall, in the annual report to be next thereafter made by them to the Secretary of State, specify the period at which, at the time of the settlement of the terms of the sale, purchase, or exchange in respect of which such payment was made, it was estimated that any and every then subsisting lease or grant of the tithes or land thereby dealt with would have expired.

9. In all dealings between the Ecclesiastical Commissioners for England as to lands now vested or which shall hereafter become vested in them and the holders of such lands, it shall be lawful for the parties to refer to arbitration the finding of the annual value and of the value of the fee simple thereof, subject to the exceptions and reservations, if any to be excepted and reserved thereout, and such finding shall be adopted in computing the terms of the sale, purchase, or exchange of such lands or of any interest therein, regard being had in the final settlement of such terms in every such case to the just and reasonable claims of such holders of land under lease or otherwise arising from the long-continued practice of renewal, and the said last-mentioned parties shall for the purpose of such arbitration be subject to the provisions hereinbefore contained as to the appointment of arbitrators and the payment of costs.

10. The Ecclesiastical Commissioners for England shall with reference to their dealings with lands vested in them state in their reports the like particulars which the Church Estates



Commissioners are by the said recited Act required to state in their reports with reference to lands dealt with by them under the same Act.

11. In computing the due regard to be paid to the just and reasonable claims of the present holders of lands under lease or otherwise arising from the long-continued practice of renewal, the basis of compensation may, at the discretion and with the approval of the Church Estates' Commissioners, be that laid down by the Episcopal and Capitular Revenues' Commissioners in their report of 1850, or according to the recommendations laid down in the Lords' report on the same subject in 1851.

12. In all computations in any way dependent on the duration of lives, the expectation of life shall not be calculated according to the tables commonly known as the Northampton Tables, nor upon tables less favourable to the expectation of life than the life tables which are appended to the Twelfth Annual Report of the Registrar-General of Births, Deaths, and Marriages in England, nor than any tables which may be from time to time issued by the same authority.

13. The provisions contained in the 11th section of the said Act with reference to the interpretation of the words and expressions therein specified shall apply to the same words and expressions whenever they occur in this Act, and the said Act and this Act shall be read and construed together as one Act.

#### NOTICES OF NEW BOOKS.

*The Common Law Procedure Act, 1854, (17 & 18 Vict. c. 125,) with Practical Notes: an Introduction, explaining the Nature and Extent of the Equitable Jurisdiction conferred on the Superior Courts of Common Law; the Changes effected in the Law of Evidence; and the Alterations in Practice introduced by the Statute: and a Copious Index.* By ROBERT MALCOLM KERR, Barrister-at-Law. London: Butterworths. 1854. Pp. 124; lxxxvii.

WE noticed in our Number for the 21st October, the greater part of the amendments in the law effected by the Common Law Procedure Act of last Session, as expounded in Mr. Malcolm Kerr's valuable work, namely:—Specific Performance of Contracts; Injunctions; Discovery; Equitable Defences; Compulsory Arbitrations; and Proceedings on and after Trial. We have now to consider the alterations that have taken place in the Law of Evidence,—in the power of attaching Debts in Execution;—in the Summary Proceedings of the Court;—and the Amendments in Procedure.

The new Act has made several important

improvements in the *Rules of Evidence*, which are comprised in sections 19 to 22 inclusive, and they are declared applicable to all our Courts of civil jurisdiction. Mr. Kerr, in his introduction to the Act, states the alterations which have been made of late years, and explains the scope and object of the further changes effected by the present Act. He notices, in particular, the admissibility of witnesses interested in the result of the action, and the mode of their examination; the power of receiving the affirmations of witnesses instead of oaths; the right of discrediting a party's own witness; the facilities in proving statements contradictory of adverse witnesses; the cross-examination of witnesses regarding previous statements in writing; the proof of the previous conviction of a witness of some offence implying want of probity or veracity; dispensing with the evidence of attesting witnesses; the comparison of disputed handwriting; and the privilege of paying into Court any deficient stamp duty with the penalty at the trial.

These are comprehensive and valuable amendments in the administration of justice in the Superior Courts, and cannot fail, we trust, in restoring to those tribunals that respect which was partly impaired by the delay and expense which formerly existed.

The enactments on these subjects are, in substance, as follow:—As to the

#### LAW OF EVIDENCE.

1. *Affirmations in lieu of oaths.*—If any person called as a witness now refuses to be sworn from alleged conscientious motives, the Judge may, upon being satisfied of the sincerity of the objection, permit the witness, instead of being sworn, to make a solemn affirmation or declaration; which, it is enacted, shall be of the same force and effect as if the witness had taken an oath in the usual form (s. 20).

2. *Contradicting a party's own witness.*—A party producing a witness is not to be allowed to impeach his credit by general evidence of bad character, but he may, if the witness in the opinion of the Judge proves adverse, contradict him by other evidence, or, by leave of the Judge, prove that he has made at other times a statement inconsistent with his present testimony. But before such last-mentioned proof can be given, the circumstances of the statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement (s. 21).

3. *Proof of contradictory statements.*—If a witness, upon cross-examination as to a former statement by him, inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be

given that he did in fact make it. But before such proof can be given, the circumstances of the statement, sufficient to designate the particular occasion, must be mentioned to him, and he must be asked whether or not he has made such statement (s. 23).

4. *Production of contradictory statements.*—A witness may now be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the cause, without such writing being shown to him. But if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of contradicting him (s. 24).

The Judge may also, at any time during the trial, require the production of the writing for his inspection, and make such use of it for the purposes of the trial as he thinks fit (s. 24).

5. *Proof of conviction of offence.*—A witness may be questioned, as he has hitherto been, as to whether he has been convicted of any felony or misdemeanor; but if, upon being so questioned, he either denies the fact or refuses to answer, the opposite party may prove such conviction (s. 25). The denial of the witness or his refusal to answer is no longer conclusive. On the contrary, it exposes his whole evidence to the imputation of being false if a conviction be proved. On the other hand, if the fact of the conviction be admitted by the witness, the examination can go no further, and the admission will afford ground for a presumption, that in other matters the witness has spoken the truth, since he has not hesitated to confess an error in his previous life.

6. *Attesting witnesses.*—When the genuineness of a document is not in dispute, the parties ought not to be limited to any particular witnesses to prove the execution. When the genuineness is in dispute, the party producing it will be sure to call the attesting witness, as his absence would tend to throw the greatest discredit on the instrument. It is, therefore, no longer necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite. Such instrument may be proved by admission, or otherwise, as if there had been no attesting witness thereto (s. 26).

7. *Comparison of hand-writing.*—Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine, may now be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the Court and jury as evidence of the genuineness, or otherwise, of the writing in dispute (s. 27).

8. *Stamp duty.*—Upon the production of any document as evidence at a trial, it is now the duty of the officer of the Court, whose business it is to read such document, to call the attention of the Judge to any omission or insufficiency of the stamp; and the document, if unstamped, or not sufficiently stamped, is not to be received in evidence until the whole

or (as the case may be) the deficiency of the stamp duty, and the penalty required by Statute, together with the additional penalty of 11., has been paid (s. 28).

The officer of the Court must give a receipt for the amount of the duty or deficiency which the Judge determines to be payable, and also of the penalty, and thereupon the document will be admissible in evidence, saving all just exceptions on other grounds (s. 29).

There is a class of documents which cannot be stamped after execution, even on payment of a penalty. It is thought that these instruments, if they could be stamped when the necessity arose, would not in general be stamped at all. These are not within the number of documents made admissible by the above enactment, which, it is expressly provided, is not to extend to any document which cannot now be stamped after the execution thereof (s. 29).

#### EXECUTION BY ATTACHMENT FOR DEBTS.

A Judge may now, upon the *ex parte* application of any judgment creditor [upon affidavit by himself or his attorney stating that judgment has been recovered, and that it is still unsatisfied, and that any other person is indebted to the judgment debtor, and is within the jurisdiction], order that all debts owing by such third person (who is called the *garnishee*) to the judgment debtor shall be attached to answer the judgment debt (s. 61).

The judgment creditor, or his attorney, may, however, be unable to make the affidavit necessary to obtain an order for the attachment of the debts owing and accruing to the judgment debtor. If so, a discovery may be obtained from the judgment debtor of what property he has capable of being thus taken in execution; for any creditor, who has obtained a judgment in any of the Superior Courts, may apply to the Court or a Judge for, and the Court or such Judge may make, a rule or order, that the judgment debtor should be orally examined as to any and what debts are owing to him (s. 60).

This preliminary examination may be ordered to take place before a Master of the Court, or before such other person as the Court or Judge may appoint (s. 60). The production of books and documents may also be ordered.

Upon the discovery had by such examination, which is to be conducted in the same manner as the oral examination of a party to the cause, the necessary affidavit may be made, and the order for attachment obtained.

The proceedings against the garnishee are to be as follows :—

The order for attachment being obtained must be served on, or a notice thereof given to, the garnishee; for the service of the order or such notice thereof given in such manner as

the Judge may direct, is to bind such debts in his hands (s. 62).

By the original order of attachment, or by any subsequent order, the garnishee may be ordered to appear before the Judge, or a Master of the Court, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt (s. 61).

If the garnishee does not dispute the debt due or claimed to be due from him to the judgment debtor, he ought to pay the amount into Court; for if he does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, or if he does not appear upon the summons, the Judge may order execution to issue, and it may be sued forth accordingly, without any previous writ or process, to levy the amount due from the garnishee towards satisfaction of the judgment debt (s. 63).

If, however, the garnishee disputes his liability, he ought to appear upon the summons; and the Judge, instead of making an order for execution, may order that the judgment creditor be at liberty to proceed against the garnishee by writ, calling upon him to show cause why there should not be execution against him for the alleged debt, or for the amount due to the judgment debtor, if less than the judgment debt, and for costs of suit (s. 64). The proceedings upon such suit are to be the same, as nearly as may be, as upon a writ of *revivor* issued under 'The Common Law Procedure Act, 1852.'

Payment made by or execution levied upon the garnishee will be a valid discharge to him as against the judgment debtor to the amount paid or levied (s. 65).

A debt attachment book is to be kept at the Master's Offices, and copies of any entries made therein may be taken by any person (s. 66).

The costs of an application for an attachment of debts are in the discretion of the Court or of the Judge (s. 67).

#### SUMMARY PROCEEDINGS.

On questions, arising in the progress of an action, which are brought before the Court for decision, the evidence is submitted in the form of voluntary affidavits. The Commissioners justly observe that the testimony thus adduced is often most unsatisfactory, there being no cross-examination or the usual means of testing the veracity of the deponent, or his knowledge of the matters deposed to.

Mr. Kerr also remarks, that hitherto the party seeking the intervention of the Court has been limited to the evidence adduced by him in the first instance, and been precluded from filing fresh affidavits in answer to those produced by his opponent. The latter might set up new facts, which

the former could have refuted or explained; but he has been shut out from doing so, and was thus always at the mercy of his opponent, who had "the advantage of swearing last." The Courts, on the other hand, in the case of conflicting affidavits, have always avoided the task of determining on which side the truth lay. The only question with them was, whether the affidavits, on the face of them, afforded an answer to the case set up by the party applying for their intervention. If they seemed to do so, the Courts would not interfere. This system consequently has operated as a premium to unscrupulousness in the party swearing last, knowing the impossibility of his being contradicted. There was one farther inconvenience in the system hitherto in operation; a party requiring the evidence of an unwilling witness had no means of obtaining it: no person (with the single exception of an officer of the Court) could be compelled to give evidence *by affidavit* as he might be to give it orally in Court.

These defects have been removed by the following enactments:—

Upon motions founded upon affidavits either party may, with the leave of the Court or a Judge, make affidavits in answer to the affidavits of the opposite party, upon any new matter arising out of such affidavits (s. 45). Neither party can now be sure of "the advantage of swearing last."

An unwilling witness can no longer withhold his testimony:

For any party requiring the affidavit of a person who refuses to make an affidavit, may apply by summons for an order to such person to appear and be examined before a Judge or Master, as to the matters concerning which he has refused to make an affidavit (s. 48); and the Judge may, if he think fit, make such order for the attendance of such person for examination, and for the production of any writings or documents (s. 48). The examination is to be conducted, and the depositions taken down and returned, in the mode now used in *voir dire* examinations of witnesses (s. 49).

It has frequently happened that the intervention of the Court has been refused, because, in the opinion of the Court at the time, no sufficient ground was shown for its interference. This has involved a fresh application on amended affidavits, but often at great cost and delay.

Such delay or expense may now be avoided; for upon the hearing of any motion or summons, the Court or the Judge, at their or his discretion, and upon such terms as they or he think reasonable, may, from time to time, order

such documents to be produced, and such witnesses to appear, and be examined *videlicet*, either before the Court or Judge, or before the Master, as they or he think fit; and upon hearing such evidence, or reading the report of such Master, the Court or the Judge may make such rule or order as may be just (s. 46).

The Court or the Judge may, by such rule or order, or any subsequent rule or order, command the attendance of the witnesses named therein, for the purpose of being examined, or the production of any writings or other documents (s. 47). The Court, or the Judge, or the Master, may adjourn the examination from time to time as occasion may require; and the proceedings upon it are to be conducted, and the depositions taken down, as nearly as may be, in the mode now in use with respect to the *videlicet* examination of witnesses upon interrogatories (s. 47).

#### AMENDMENTS IN PROCEDURE.

1. *As to new trials.*—In the event of a document which is tendered in evidence being thus objected to, the Judge must decide on the objection. If he holds that the document, not being stamped, requires a stamp, or being stamped, that it is insufficiently stamped, this ground of objection may be immediately removed. The Judge may, however, hold that the document tendered in evidence does not require a stamp at all, or if stamped, that it is already sufficiently stamped. If he does so, the evidence is at once admitted.

Hitherto if the Judge decided erroneously in either case, a new trial would be granted, if the document had been given in evidence; but now no new trial can be granted by reason of the ruling of the Judge, that the stamp upon any document is sufficient (which must be his ruling if the document be stamped at the trial), or that the document does not require a stamp (s. 31).

2. *As to the costs of an abortive trial,* it is enacted, that when a new trial is granted on the ground that the verdict was against the evidence, the costs of the first trial shall abide the event (s. 44). When a new trial was granted for misdirection by the Judge, the costs of the first trial followed the event of the second; but when a jury took a wrong view on a question of fact, and a new trial was granted, the payment of the costs of the first trial was a necessary preliminary. Now the party will no longer be punished for an error committed by the jury, any more than he has hitherto been for one committed by the Judge.

3. *A trial de novo* is awarded when, owing to some irregularity or defect in the proceedings, themselves, the proper effect of the first *verdict* had been frustrated. It is enacted that upon an award of a trial *de novo*, upon matter appearing on the record, error may be brought (s. 43). If the Court of Exchequer Chamber awards a trial *de novo*, error may alike be brought on their judgment in the House of

Lords (s. 43). A judgment affirmed in either Court of Error, will be affirmed with costs.

4. *As to the revivor of suits.*—The Common Law Procedure Act, 1852 (s. 131), provided a new procedure in lieu of the writ of *scire facias*, for the revival of judgments and other proceedings, by and against persons not parties to the record. The writ of revivor is directed to the party called upon to show cause why judgment should not be awarded; and calls upon him to appear, and gives notice that, in default of appearance, execution may be issued, as in the case of a writ of summons. The proceedings after appearance are the same as those in an ordinary action. In the case of proceedings against executors, upon a judgment of assets *in futuro*; such proceedings are now to be had and taken in the manner provided by the Common Law Procedure Act, 1852, as to writs of revivor (s. 91).

5. *In regard to the abatement of actions.*—The proceedings under the Common Law Procedure Act, 1852, for the revival of judgments and other proceedings by and against persons not parties to the record, were framed to meet those cases in which writs would otherwise abate, by the death, marriage, or bankruptcy of one of the parties to the action.

But no means were afforded to a surviving defendant, or to the representative of a sole defendant who had died, of compelling the plaintiff in an action to proceed therein, so as to bring the proceedings to a close. This omission has now been applied.

Where an action would have abated by reason of the death of either party, the defendant, or the person against whom the action may be continued, may now apply, by a summons at Chambers, to compel the plaintiff, or the person entitled to proceed with the action in the room of the plaintiff, to proceed according to the provisions of the Common Law Procedure Act, 1852 (s. 92). If the Judge at Chambers makes an order on the plaintiff, or person entitled to proceed with the action, that he do proceed therein, he must do so within such time as the Judge orders. In default of his proceeding in terms of the order, the defendant, or person against whom the action may be continued, will be entitled to enter a suggestion of the default, and of the representative character of the person by or against whom the action may be proceeded with, and to have judgment for the costs of the action and suggestion against the plaintiff, or against the person entitled to proceed in his room, as the case may be (s. 93).

This summary proceeding to compel the continuance or abandonment of an action, in case of the death of one of several plaintiffs or defendants, or of a sole defendant, may be adopted in the other cases of abatement provided for by the Common Law Procedure Act, 1852.

6. *In actions of ejectment.*—The Courts sometimes interfered to stay proceedings in the action, until security for the costs of it was given by the unsuccessful claimant. They are now to

done by express enactment. For if any person brings an action of ejectment, after a prior action of ejectment, for the same premises as had been unsuccessfully brought by such person against the same defendant, the Court or a Judge may, on the application of the defendant, at any time after he has appeared to the writ, order the plaintiff to give to the defendant security for the payment of the defendant's costs, and that all further proceedings in the cause be stayed until such security be given (s. 93).

7. *As to writs of execution.*—Writs of execution issued since the former Procedure Act became law, have only been in force for a year, but are capable of being kept in force by being renewed from time to time. A somewhat similar enactment has been made with reference to writs of execution issued previously to the Common Law Procedure Act, 1852, coming into operation. Such writs, if still unexecuted, will not now remain in force for more than six months after the 24th October, 1854, unless renewed in the same manner as writs may be renewed under the Common Law Procedure Act, 1852, s. 124.

There are various formal clauses, such as s. 89, providing that any person giving false evidence upon any examination, or in any affidavit, shall be liable to the penalties of wilful and corrupt perjury:—s. 90, enacting that writs of execution to fix bail may now be tested and be made returnable in vacation:—s. 96, authorising amendments to be made in terms analogous to those of s. 222 of the former Procedure Act; and ss. 97 and 98, provide that rules and orders, for the effectual execution of the Act and of the intention and object thereof may be made, and now and altered suits and forms of proceedings issued by the Judges.

We have thus laid before our readers a full analysis, with several extracts from Mr. Kerr's Introductory Treatise on this important Statute. The various alterations which have been effected are stated clearly but concisely, accompanied by such explanatory references to the previous state of the law as were necessary to elucidate the change. The work certainly forms a valuable edition of the Act, and we shall yet have occasion to notice some of Mr. Kerr's notes on the effect and legal construction of some of the sections which, like most other elaborate Statutes, seem not altogether free from doubt or difficulty. Nevertheless, our conviction is, that there are few legislative measures so beneficial and free from imperfection as "the Common Law Procedure Act of 1854."

## POINTS IN COMMON LAW PRACTICE.

### AMENDMENT OF DECLARATION UNDER S. 222 OF PROCEDURE ACT, 1852.

In an action upon a judgment recovered by the plaintiff against the defendant, the declaration alleged such judgment to have been recovered on Dec. 28, 1848, whereas it appeared, upon the record being brought into Court on the trial of an issue of *nul tiel record*, that the true date was Dec. 23. The Court amended the declaration under the 15 & 16 Vict. c. 76, s. 222, by inserting the true date. *Noble v. Chapman*, 14 C. B. 400.

### DISCRETION OF NISI PRIUS JUDGE AS TO AMENDMENT OF RECORD.

*Held*, that the Court will not interfere with the discretion of the Judge at Nisi Prius as to the amendment of the record in an action. *Morgan and another v. Pike*, 14 C. B. 473.

## LAW OF ATTORNEYS.

### SPECIAL AGREEMENT BETWEEN SOLICITOR AND CLIENT AS TO BILL OF COSTS.

It appeared that Mr. Bainbrigg, claiming to be entitled to certain real estates, had, between the years 1829 and 1844, entered into very extensive litigation respecting his claim, in which he had employed Mr. Moss as his solicitor, and that becoming tired of this litigation, he had, on July 21, 1845, relinquished all his right to his brother, and in the following November he agreed with Mr. Moss that if the suit failed, one-third was to be taken in full discharge of his bill of costs, but that if it succeeded, the whole should be paid. The litigation was successfully brought to a conclusion in 1851, and Mr. Moss, upon the balance not being paid, brought an action for the same.

On a petition for the usual order for a delivery and taxation of the bills and to stay the action, the *Master of the Rolls* said:—

"This is, in fact, an application to set aside an agreement entered into between Thomas P. Bainbrigg and John Moss, on the 18th of November, 1845.

"At the time when the petitioner entered into the agreement, he was perfectly well aware that Moss had a claim against him on bills of costs for 9,377*l.*, and that a considerable part of this sum was for costs out of pocket. At this time, Mr. Moss might have enforced pay-

ment of the amount due on those bills, whenever he thought fit; and it is admitted that it would have been very inconvenient to the petitioner to have then paid the amount. On the other hand, the petitioner might, undoubtedly, have obtained an order to tax the bill; but on the amount being ascertained, he would have been liable to pay it, and would have been subject to the usual compulsory process (which is very summary) to compel payment of it.

"In that state of things, Mr. Thomas P. Bainbridge enters into an agreement with Mr. Moss, to pay him 3,500*l.*,—1,500*l.* in money and 2,000*l.* by a bill,—which it is agreed shall completely and entirely exonerate Mr. Thomas P. Bainbridge from all future claims in respect of the bills of costs, whatever their amount might be, if the estate should not be recovered. But if the estate should be recovered, then he was to remain liable to Mr. Moss for the balance. The petitioner being well aware that more than 3,500*l.* was due, for more than that was claimed for costs out of pocket, enters into an agreement, by which, on payment of 3,500*l.*, Mr. Moss, in case of failure in the litigation, agrees to forego all further claim against him; but, in the event of success, is to be entitled to the balance of that bill. Nothing is said as to interest on balances, far less of compound interest, and it is for a Court of Law, and not for me, to determine whether Mr. Moss could or could not claim anything beyond interest from the time when the balance became due, that is, from the time the estate was recovered. The result, however, is that the petitioner gets this great advantage from the agreement:—he is exonerated entirely from all the risks of the contest; and under no circumstances will have to pay more than 3,500*l.*, unless the balance payable to Mr. Moss should exceed the amount payable by his brother under the agreement between them. In the uncertainty of the case, even if the petitioner had been carefully advised by a competent person on the subject, and had been recommended to enter into that contract and no other, it appears to me that it was a wise and prudent agreement to have entered into; and that whatever might be its effect as regarded his brother, the petitioner himself was gaining a considerable advantage by entering into it. It is true, that after six years' litigation, it has been ascertained by the verdict that the petitioner was entitled to recover the estate; and, no doubt, if persons could foresee future events, they would enter into very different arrangements from those which they do enter into when their knowledge of future events is altogether uncertain.

"The result, however, is, that after a lapse of eight years the petitioner comes to set aside a contract, when it is totally impossible for the Court to replace the parties in the same situation as they were in at the time when they entered into it. If the contract was not binding on Mr. Bainbridge, neither was it binding

on Mr. Moss; and I can have no doubt whatever, that if before that verdict, Mr. Moss had turned round and insisted that the agreement was not binding on him, and that he was entitled to enforce payment of the whole bill, the petitioner would then have strenuously insisted, that it was a perfectly good and valid agreement.

"In that state of circumstances, after this lapse of time, and after what I must consider a settlement of the bill, of which the petitioner has taken the benefit, I am asked, on the ground of the existence of the relation of solicitor and client, to set aside the agreement, when the solicitor may have lost his vouchers, may have parted with the very things, which eight years ago would have enabled him to sustain and prove the propriety of his bill.

"I go to the full extent of the authorities quoted by Mr. Prior;<sup>1</sup> but there is this great distinction between the case of an agreement between a solicitor and client pending a litigation (when a client cannot, without the greatest inconvenience, part with his solicitor, who alone is fully aware of all the circumstances and bearings of his case), and the present, where, although the relation of solicitor and client existed, still the litigation as regarded Thomas P. Bainbridge was in fact at an end, because he had determined to go on no longer, and the only question was how to liquidate and discharge the costs then already incurred.

"Looking at this case in every possible view, and without referring to any question of jurisdiction, I am of opinion that this is a binding contract between the parties, which the petitioner cannot set aside; and if it be a binding contract, then it is admitted that the petitioner cannot tax the bill.

"I express no opinion as to the rights between the two brothers, or whether William M. Bainbridge may, or may not, have a right, under the third party clause, to ascertain the amount to be charged on his estate, but I suppose as they are brothers, they will settle that between themselves.

"The petition, in my opinion, wholly fails, and must be dismissed with costs." *In re Moss*, 17 Beav. 340.

<sup>1</sup> *Saunderson v. Glass*, 2 Atk. 297; *Nokes v. Warton*, 5 Beav. 448; *Coleman v. Mellersh*, 2 M. & G. 314; *Cressley v. Parker*, 1 Jac. & W. 460.

## LAW OF COSTS.

### OF ADMINISTRATOR RETAINING BALANCES.

AN administrator was allowed his costs of an administration suit, although he had unnecessarily retained a balance of 3,700*l.* in his hands for three years, but he was charged interest thereon. *Holgate v. Harworth*, 17 Beav. 259.

### OF VENDOR IN SPECIFIC PERFORMANCE SUIT.

In a suit by a vendor for a specific performance, costs were given him, although both parties were in the wrong as to the only point in contest, namely, as to interest on the purchase-money,—a good title having been shown prior to the institution of the suit, and it appearing that the conduct of the purchaser had prevented the completion down to that time.

“As to the frame and scope of the bill,” observed the *Master of the Rolls*, “I shall give the direction which I invariably give the Taxing Master, that if he shall find that the bill is too prolix, he may reduce and moderate the costs of it.” *Sherwin v. Shakespeare*, 17 Beav. 267.

## THE MEETING AT LEEDS AND THE PRESS.

*To the Editor of the Legal Observer.*

SIR,—The courteous but erroneous comments, in the last Number of the *Law Times*, on my remarks respecting THE PRESS, at the Leeds Meeting of the Metropolitan and Provincial Law Association, induce me to request a little space in your columns, not for the purpose of argument (in which respect I have no wish to add to what was said at the meeting), but to remove misconceptions.

The *Law Times* appears to assume—1st. That the desideratum is to act only on public, not on professional, opinion. And 2ndly. That the contemplated mode of action is through a new journal. On these assumptions, the Editor maintains—3rdly. That such a journal would either not be read, or would be overwhelmed by abuse and ridicule, and in either case would have no influence.

On these three points, I beg to remark:—

1st. That an action on public opinion, though the *chief*, is not the *sole* desideratum. A greatly improved action on *professional* opinion is an indispensable accompaniment to any beneficial

action on the public. Our *professional* publications are therefore amongst those which it is essential to invigorate and extend.

2nd. Whether the mode of action should be by a new publication, or through existing ones, is a question on which no opinion was expressed at the meeting; nor is the time yet come for usefully discussing it. The point for discussion at present is—not what shall be the mode of action, but whether the Profession shall act *at all*; and on this point the only distinction (which can hardly be called a difference) between the *Law Times* and myself is, that what the *Law Times* admits to be an “object of indubitable excellence,” I conceive to be a matter of vital necessity. When the Profession has determined to *act*, it will, without much difficulty, decide on the most eligible mode of action. I by no means expect or wish for a new publication, if those now in existence are able and willing to do us justice. But, if not, I think the Profession ought not to shrink from the difficulties of a new one; and, in that event—

3rdly. I should not fear abuse or ridicule, which, properly encountered, are apt to recoil on their authors; nor should I at all despair of such a publication (which, if conducted with ability, candour, and discretion, would be one of the most valuable periodicals of the day) obtaining at least as many readers as are found sufficient to support other periodicals, and taking its proper place amongst the organs that influence public opinion.

I am, Sir, yours obediently.

JOHN HOPE SHAW.

## AUCTION DEPOSITS ON SALES OF ESTATES.

THE Council of the Incorporated Law Society have transmitted to the London Auctioneers of Estates the following regulation, which they have thought it right to recommend to the general body of Solicitors for adoption in all cases of sales of estates by auction in London:—

“That all Deposits on account of Purchase-money on Sales of Estates by Auction in London, be paid to the Auctioneer, who shall immediately after the Sale pay the same into a Bank, to be named by the Vendor in the Conditions of Sale, in the joint names and subject to the joint order of the Vendor and Purchaser, or their nominees, and at the Vendor’s risk.”

The adoption of this course will enable the parties to place the deposit in a bank where interest is allowed, or to invest it in Exchequer Bills or Stock, or to effect any other arrangement respecting it, that may be mutually desired for making it safe and productive. In such cases the interest would belong to the party ultimately entitled to the deposit.

This practice already prevails very generally in the country.

## ANNUAL REPORT OF THE INCORPORATED SOCIETY OF ATTORNEYS AND SOLICITORS OF IRELAND.

We have been favoured with a copy of the Report of the Incorporated Society of Attorneys and Solicitors of Ireland, stating their proceedings last year, from which we select the following passages as probably interesting to our readers :—

1st. On the appointment of solicitors as taxing officers, it is observed that

“On the introduction of the Bill into Parliament to make better provision for the discharge of the duties of the taxing officer for Common Law business in Ireland, your Council lost no time in communicating with their friends in Parliament on the subject, and urging that the two Masters (one of whom it was proposed by the Bill should be a barrister, and the other an attorney) should be placed on a perfect equality with respect to jurisdiction, duties, and salary, and that any appeal from either officer should be to the Court, according to the practice both in the Law Courts and in Chancery, and also that the persons to be appointed should be attorneys or solicitors (of not less than ten years' standing), as being more competent to discharge the duties of the office, in consequence of their more intimate knowledge of the details of business, and the administration of the law, than the other branch of the Profession.

“Your Council devoted much time and attention to that Bill, and forwarded a petition to the House of Commons, which was presented by G. A. Hamilton, Esq., praying, that the second Taxing Master, to be appointed in conjunction with Henry Colles, Esq., should be an attorney and solicitor, and that all future appointments of both Taxing Masters, should, in like manner, be selected from the Profession of Attorney and Solicitor in Ireland, and that the qualification, jurisdiction, duties, and emoluments, should be similar and equal with an appeal from either officer to the Court. When the Bill had passed the lower House, a similar petition was presented by the Earl of Wicklow to the House of Lords, and though your Council did not obtain all they sought for, yet the

Act which has passed has benefited our Profession, and recognised our claims to an extent not intended by the original Bill.

2nd. On the stamp duties on assignments of judgments.—

“A considerable difference of opinion having long existed as to the amount of stamp duty to which the assignments of judgments were liable, your Council had lately a communication with the Incorporated Law Society, Chancery Lane, London, on the subject, and, availing themselves of the favourable opportunity which our brethren in England were kindly pleased to afford us of having the Act amended, your Council are now enabled to state that a point of so much importance, and so long in dispute and unsettled, has now been satisfactorily ascertained and arranged, as by the Stamp Duties Act (No. 2), entitled ‘An Act to repeal certain stamp duties, and to grant others in lieu thereof,’ &c., and which was passed in the last Session of Parliament, it is by clause vi. of said Act enacted, that 1*l.* 15*s.* shall be the stamp duty payable for and upon every assignment of any judgment in Ireland; by which a very considerable saving will be effected, for, by the late Stamp Act of 13 & 14 Vict. c. 97, assignments of mortgages were only subject to 1*l.* 15*s.*, whereas assignments of judgments, not being expressly mentioned, were required (in Dublin) to be stamped on the same scale as conveyances and assignments on the sale of property, real or personal.”

3rd. The report next notices the measures adopted last year for the repeal of the Certificate Duty, and which have for the present been unavoidably suspended.

“Your Council consider that the grounds on which the Profession in this country hitherto sought its repeal have been materially strengthened by the extension of the income tax to Ireland, which attorneys and solicitors must of course pay, in common with other professions not similarly burthened, for although your Council do not express any opinion upon the general policy of an income tax, yet they submit, that if attorneys, solicitors, and proctors, are to be subject to such an impost, they should, at all events, be relieved from the Annual Certificate Duty.

“Your Council cannot take leave of this subject without, in common with our brethren in England, again expressing the very deep obligation which the Profession is under to Lord Robert Grosvenor, for his indefatigable exertions in endeavouring to free them from this most odious and unjust tax, now rendered more oppressive in consequence of having to pay the income tax, and at a time, too, when our professional emoluments have been so seriously curtailed.

4th. Regarding the burthens on the suitors of stamps and fees, the Report states that—

“On the retirement from office of the late



Lord Chancellor, his lordship returned the memorial (which had been presented to him in the month of July, 1852, on the subject of the oppressive stamp duties and office fees) accompanied by a letter from his lordship's secretary, which stated that his lordship was necessarily obliged by the business of the Court to defer the consideration of it, and unable therefore to frame any measures to effectuate its objects. His retirement from office would, of course, put it out of his power to do so, but he had no hesitation in expressing his concurrence in the opinion and representation of the memorialists, that the office fees exacted from the suitors of the Court of Chancery were much higher than they ought to be, and subjected the suitors to a burthen from which they ought to be liberally relieved.

"In consequence of such an opinion, coming from so high an authority, your Council deemed it advisable to follow up the matter by having a return moved for in the House of Commons in relation to the compensation and Fee Fund, and also 'of the Suitors' Fee Fund' of the Court of Chancery in Ireland, and which return was ordered to be printed on the 30th of May last, from which it appears 'that an enormous amount of salaries and retired allowances continues to be paid, and in effect swallows up the entire fund, which is composed altogether of fees exacted from the practitioners of the Court.'

"Your Council have ascertained that the Profession in England have lately had reason to congratulate themselves and their clients that the Legislature distinctly recognised and acted on the principle of paying a large part of the expense of administering justice in the Court of Chancery, out of the Consolidated Fund; for by the *Suitors' Relief Act* of 1852, the English Fee Fund in Chancery was relieved from the salaries of the Judges to the amount of 25,000*l.* a year.

"Before obtaining even this relief, our brethren in England had repeatedly petitioned Parliament on the subject urging that not only the Judges, but the principal, if not all the officers of the Court and the expenses of the Court, should be defrayed by the State.

"Your Council recommend to the Society the adoption of a similar course, as it appears to them that not only the expenses of the Court and the salaries of the Judges (which in Ireland are already paid out of the general income of the State), but also the salaries of all the officers of the Courts should also be paid out of the Consolidated Fund. And we are decidedly of opinion that so long as enormous salaries and fees of office are levied on the suitors of the Courts, the so much wanted Law and Equity Reform will never induce the public to believe that economy and reform are the real objects of these measures.

"It is as contrary to the principles of Equity as it is to those of the Constitution, that justice should be denied, or sold, or delayed; and if the suitors of our Courts are, in the course of their proceedings, compelled to pay, or unable

to pay, enormous and oppressive official fees, or stamp duties in lieu thereof, 'it is in effect a denial of justice to the poor, a sale of justice to the rich, and a delay of justice to all.'

"We, therefore, urge on the Profession in the strongest manner to spare no exertion to procure the total exemption of the practitioners and suitors of the Law and Equity Courts from the payment of all stamp duties and fees on proceedings therein, and to induce the Legislature to provide for the payment of the salaries of all the officers of the Courts, out of the Consolidated Fund, which we submit as the proper mode of providing for such salaries and fees in a country where the Legislature seems anxious to have justice freely and cheaply administered."

5th. On the encroachments by the Bar on the Solicitors, the report states, that—

"The appointment of a gentleman, not being a solicitor or attorney, to fill the office of Crown Solicitor for the Leinster Circuit having been considered a very serious interference with the rights and privileges of our Profession, your Council thought it proper to submit a case to counsel on the question, and having obtained his opinion, a Special General Meeting of the Society was called to consider the subject, at which resolutions were passed, condemnatory of such appointment, as being an unjustifiable infringement upon our Professional rights, and directing that a memorial should be presented to his Excellency the Lord Lieutenant on the subject. A deputation, appointed for the purpose, accordingly submitted the memorial to his excellency, together with the case and opinion which had been so laid before counsel, and his Excellency was pleased to observe, that he would carefully examine both documents, and make himself acquainted with their contents, and would also submit them to the Attorney and Solicitor-General for their opinion, which he hoped to obtain in a few days. His excellency was pleased also to add, that his own feeling on the subject was in favour of the appointment of solicitors to the offices which properly belonged to their Profession, but that it did not rest with him to decide on the legality of the appointment which had been made.

"The following is the communication written by direction of his Excellency, and addressed to the President of this Society, with reference to the appointment in question, and as the answer to our memorial:—

"Dublin Castle, 30th May, 1853.

"SIR,—I am directed by the Lord Lieutenant to acquaint you, in reference to the memorial of the Society of the Attorneys and Solicitors of Ireland, of the 14th of February last, that the law officers of the Crown having been consulted in the case to which their memorial has reference, are of opinion that the appointment of Mr. Thomas Kemmis to conduct the prosecutions on the Leinster Circuit, under the directions of the Attorney-General, is free

from any legal objection. His Excellency therefore directs me to say, that he must decline to comply with the prayer of their memorial. I am, sir, your obedient servant,

“THOS. A. LARCOM.”

“ ‘ William Goddard, Esq.’ ”

“Thus the matter rests, and an appointment which has been heretofore looked upon as peculiarly pertaining to our Profession, has been wrested from us, and conferred upon a barrister, while we are not able to record a single instance of an attorney or solicitor having been appointed to one of the numerous situations falling within the scope of the other branch of the Profession.

“Your Council felt it their duty to oppose the application of a barrister to be admitted and sworn an attorney, who had only been bound in the present Michaelmas Term; but the Court of Exchequer, to which tribunal the application was made, considered the case in question a fit one for the exercise of its discretion, owing to the very peculiar and melancholy circumstances attending the death of the applicant's brother, which the Lord Chief Baron and Baron Pennycuik stated rendered the case one of that class of cases in which the Court sometimes exercised the discretion which it was empowered to do. Mr. Baron Greene, however, said he felt considerable hesitation in concurring in the judgment of the other members of the Court, and was only led to do so under the very peculiar and distressing circumstances connected with this case.

“It is a subject of request to your Council, that the rules and regulations of the Courts in this country are by no means so stringent as in England, with respect to the admission into the Profession of persons not duly qualified, and who, in fact, have not *bonâ fide* served regular apprenticeships. This laxity they consider detrimental, not only to the interest of duly-qualified practitioners, but to the public at large, and your Council consider it ought to be remedied by some legislative enactment, which would have the effect of relieving the Courts from the exercise of a discretion too frequently imposed upon them, and which would lead to the establishment of a uniformity of practice by the several Courts in dealing with such cases.

“In the discharge of a very invidious duty, which is sometimes rendered imperative on the Society, that of opposing special applications to the Courts, by persons seeking to be admitted to the Profession without serving *bonâ fide* apprenticeships, it has come to the knowledge of your Council, that some members of the Society have inconsiderately, and without due consideration, put pen to paper, and furnished the applicants with testimonials to aid and support them in making such applications, while, at the same time, by so doing they were (from feelings of personal friendship towards the applicant) acting without due consideration for the privileges and interests of the body at large, and of the Society, which, as being members of it, they are bound to support and uphold.”

6th. As to unqualified practitioners, it is observed that—

“Several complaints have been made of unqualified persons acting in the usual business of attorneys, but the parties complained of have been cautious enough to call in the aid of some unguarded practitioner, whenever the business required proceedings to be taken in the Courts of Law or Equity.

“In the present state of the law, it is not in the power of the Council to restrain these encroachments on the usual province of solicitors.

“One recommendation the Council would however make, namely, that no regular practitioner should, on any account, recognise persons who are not duly authorised to act in legal affairs.”

7th. And advertising attorneys are thus noticed :—

“Your Council are under the disagreeable necessity of being once more obliged to notice a subject to which their attention has of late been called, viz., that of attorneys and solicitors in some few instances advertising for business, a proceeding which your Council cannot too strongly condemn, as highly injurious to the interests, and derogatory to the respectability of the Profession, and they will be obliged to publish the names of parties offending, should the opinion now again expressed by the Council not have the effect of putting a stop to such a practice.”

## LIST OF PRIVATE ACTS.

*Printed by the Queen's Printer, and whereof the Printed Copies may be given in Evidence.*

1. An act to authorise Sir William Milborne Milborne Swinnerton, Baronet, and his issue, to resume and bear the Surname of Pilkington jointly with the Surnames of Milborne and Swinnerton, and to be called by the Surnames of Milborne Swinnerton Pilkington, and for such purposes to repeal in part an Act of the 6th and 7th years of the reign of his late Majesty King William the Fourth.

2. An act to amend “Fleming's Estate Act, 1852.”

3. An act for effecting an Extinguishment of the Life Estate and Interest of Mistress Violetta Masters and the Trustees of her Marriage Settlement of and in a Freehold Close or Parcel of Land situate in the Parish of Saint Margaret, Leicester.

4. An act to enable the Trustees of the Estates of Henry Smith, Esquire, deceased, or any seven or more of them, to grant Building Leases of an Estate in the Parishes of Kensington, Chelsea, and Saint Martin in the Fields in the County of Middlesex, and for the Confirmation of certain Leases, and to enable seven or more of the said Trustees to make Leases and Estates, pursuant to the Deed of Uses of the said Henry Smith; and for other purposes.

5. An act for enlarging the River contained

in "Thornhill's Estate Act, 1852," and for granting further Powers in respect of the Thornhill Estate.

6. An act for authorising the granting of Building Leases of Lands held under the Will of William Green deceased, situate at Runworth, in the County of Lancaster.

7. An act for granting Powers of Leasing, Sale, and Exchange, and other Powers, for the Management of Freehold, Copyhold, and Leasehold Estates, devised by or which now stand limited to the Uses of the Will of the Right Honourable George Obrien Earl of Egremont, deceased.

8. An act for authorising the Sale of Estates devised by the Will of John Fowler, deceased, and for other purposes; and of which the Short Title is "Fowler's Estate Act, 1854."

9. An act for the Distribution of the Compensation paid under the London Necropolis Mausoleum Act, 1852, for the Extinction of the Commonable or other Rights over and in Woking Common; and whereof the Short Title is "Woking Commoners' Act, 1854."

10. An act to enable certain Persons to grant Leases for Building and Mining Purposes of the Estates in the Parishes of Penderryn and Ystradfellte in the County of Brecon, devised by the Will of the Reverend Reynold Davies, Clerk, deceased.

11. An act for enabling Sales to be made of Estates at Manningham in the Parish of Bradford, and at Idle in the Parish of Calverley, both in the West Riding of the County of York, devised by the Will of William Snell; and for other purposes.

12. An act to incorporate the Craft of Shoemakers of the Borough of Aberdeen; to confirm the Titles and Conveyances, and to regulate the Administration of the Estates and Affairs, of the said Craft; and for other purposes relating to the Society.

13. An act for enabling Leases, Sales, and Exchanges to be made of Lands subject to the Will of George Ward, deceased, and for other purposes, and of which the Short Title is "Ward's Estate Act, 1854."

14. An act for the better Division and Management of certain Estates in the County of Lancaster, the Property of Abraham and (the late) Alfred Darby, Esquires.

15. An act for authorising the granting of Leases of Mines in Estates in the County of Glamorgan, devised by the Will of the Reverend Reynold Davies deceased, and for other purposes, and of which the Short Title is "Jenkin's Estate Act, 1854."

16. An act to enable the Trustees of the Will of Anthony Wilkinson, Esquire, deceased, to grant Leases.

17. An act to empower the Warden and Scholars of the House or College of Scholars of Merton in the University of Oxford, to sell certain Lands situate in the Parish of Holywell otherwise Saint Cross, in the City of Oxford, and to lay out the Moneys to arise from such Sales in the Purchase of other Hereditaments.

18. An act to authorise the Sale of certain Messuages, Lands, and Hereditaments in the East Riding of the County of York, Part of the Estates devised and settled by the Will of Bertram Osbaldeston Mitford, Esquire, deceased, and for laying out the Money produced by such Sale in the Purchase of other Estates.

19. An act to enable the Trustees of the Right Honourable James Earl of Fife, deceased, to complete the Sale of the outlying Estate of Blervie in the County of Moray, and to reinvest the Sale Moneys in the Purchase of more convenient Estates, to be settled upon the same Trusts; and for other purposes.

20. An act for vesting in Trustees for Sale the settled and devised Estates of Richard Terrick Stainforth, Esquire, deceased; and for other purposes.

21. An act to extend the time during which the Trustees of the late Sir Gilbert Stirling of Mansfield, Baronet, were authorised to purchase Lands to be entailed in the Terms declared by certain Trust Deeds executed by him; to enable the Trustees to purchase within any Part of Scotland; to regulate the Powers of borrowing conferred by the said Deeds; and for other purposes relating thereto.

22. An act to enable the Trustees of a Settlement executed prior to the Marriage of Thomas Thornhill, late of Fixby in the County of York, Esquire, deceased, with Honoria Forrester, Spinster, to grant Building and other Leases of the Estates subject to the Trusts of the said Settlement, and to sell and exchange the same; and for other purposes.

23. An Act for incorporating the Trustees of the School and Charity Estates and Property belonging to the parish of Saint Catherine in the County and County of the City of Dublin, for the better Management of such Estates and Property, and for the due and careful Application of the Income of the same.

24. An act to ascertain the Periods when the Division, under the Church Building Acts, of the Parish of Stockport in the County Palatine of Chester into Two distinct and separate Parishes of Saint Mary in Stockport and Saint Thomas in Stockport shall take complete Effect, and the Exercise of the Rights of Presentation to the Rectories or Churches of the same Parishes respectively shall commence; and for other purposes.

25. An act to extend the Power to lease the Settled Estates of the Earl of Harrington, situate in the Parishes of Saint Margaret Westminster and Saint Mary Abbott's Kensington in the County of Middlesex, and for other purposes; and to be entitled "The Earl of Harrington's Estate Act, 1854."

26. An act for vesting certain Estates in the County of Lincoln, entailed by an Act of Parliament of the 27th year of the reign of his Majesty King Henry the 8th, in Trustees, upon trust to sell the same, and to lay out the Moneys thence arising in the Purchase of other Estates, to be settled to the same Uses as the estates so sold.

27. An act for vesting in Trustees, for Sale,

under the Authority of the Court of Chancery, an Estate in the County of Surrey, acquired by Partition under the Decree of that Court in lieu of those undivided Shares of Freehold Property devised by the Will of Thomas Bailey Heath Sewell, Esq., deceased, Trusts of which are declared by that Will for the Benefit of the Testator's Son and his Issue therein described; and for investing the Moneys to arise from such Sale for the Benefit of the Parties beneficially interested in the same Estate.

28. An act to provide for the Winding-up of the Trust Affairs of the late Hugh Earl of Eglinton, and to amend the Acts relative to Androssan Harbour in the County of Ayr; and for other purposes.

29. An act to authorise the granting of Mining and Farming Leases of Estates subject to the Uses of the Will of Miles Staveley Esq.

30. An act to authorise the granting of Building Leases for long Terms of Years of Parts of the Estates devised by the Will of Joseph Peel, Esq., deceased.

31. An act to authorise the granting of Building and other leases of the Settled Estates of Thomas Charles Hornbyhold, Esquire, in the Counties of Worcester and Hereford; and for other purposes.

32. An act for authorising the granting of Building, Improving, and Mining Leases by the Reverend James Allan Park, Clerk, as tenant for life in possession, and other Persons in succession after his death, of Settled Estates at Marton in the County of York, comprised in an Indenture of Settlement dated the 16th day of July, 1852; and for other purposes.

33. An act for authorising the granting of Building Leases and Leases for working Brick Earth, of Settled Estates in the County of Essex, of the Right Honourable William Bernard Lord Petre, Baron of Writtle in the County of Essex, and of which Act the Short Title is "The Petre Estate Act, 1854."

34. An act for the Partition of the Mowbrick, otherwise Mowbreck, Estate, in the County of Lancaster.

35. An act to authorise the Sale or Exchange of the Glebe Land of the Vicarage of the Parish of Bradford in the West Riding of the County of York, and of other Land in the said Parish of Bradford, held in trust for and to be henceforth vested in the Vicar of Bradford; and to authorise leases of the said Lands respectively; and for other purposes.

36. An act for enabling the granting of Leases for Mining and other purposes, and the making of Sales and Exchanges, of certain

Part of the Estates devised by the Will and Codicils of Sir William Foulis, Baronet, deceased.

37. An Act for authorising the granting of Building, Improving, and Mining Leases of Estates in the Parish of Rochdale in the County of Lancaster, comprised, as to certain undivided Shares, in the Marriage Settlement of Marcus Worsley and Harriet his Wife, and devised, as to the other undivided Shares, by the Will of Sarah Hamer, deceased.

38. An act to authorise Conveyances in Fee or Demises for long Terms of Years, under reserved Rents, of certain Parts of the Settled Estates of Charles Richard Banastre Legh, Esquire.

NOT PRINTED.

39. An act to relieve Thomas Alexander Lord Lovat Baron Lovat, of Lovat, in the County of Inverness, from the Effect of the Attainder of Simon Lord Lovat.

40. An act to dissolve the Marriage of Richard Redmond Caton, Esquire, with Anna Maria his now wife, and to enable him to marry again; and for other purposes.

41. An act to dissolve the Marriage of Henry Stocker, Schoolmaster, with Sarah Stocker his now wife, and to enable him to marry again; and for other purposes.

## NOTES OF THE WEEK.

### LIABILITY OF TRUSTEES.—LOSS OF COSTS.

In the case of *Boulton v. Beard*, recently reported in 3 De G. M'N. & G. 608, the *Lords Justices* decided, that a trustee who, notwithstanding he followed the advice of two counsel, had erroneously distributed the estate, must pay the deficiency and costs. The consequence of this decision will probably be, that instead of consulting counsel, the solicitor will advise his client in all doubtful cases to have a special case stated for the opinion of the Court.

### MICHAELMAS TERM EXAMINATION.

In answer to some inquiries of the candidates of this Term, we may mention that the usual practice of the Examiners has been not to frame any questions upon Acts of Parliament or Rules of Court which have only just come into operation; but of course they do not interrogate into points of law or practice which have been abolished or altered by recent enactments or orders.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lord Chancellor.

*Hope v. Hope.* Aug. 5, 1854.

SUBSTITUTED SERVICE OF PROCESS ON SOLICITORS OF MARRIED WOMAN SUING FOR DIVORCE.

Substituted service directed on the solicitors

of a married woman, having the management of a suit in the Ecclesiastical Court for a divorce, in a suit by a next friend on behalf of her infant children to have the trusts of the marriage settlement carried into effect, and for the delivery up of them by her to their father, where it appeared

that although she had not entered an appearance, she had filed affidavits in opposition to an application to the Court below for such delivery up of their children.

It appeared in this suit by the next friend, on behalf of the infant children of Mr. and Mrs. Hope, to have the trusts of the settlement entered into upon their marriage carried into effect, and for the delivery up of the children to their father, that an objection was made on appeal from the Master of the Rolls to substituted service of process on the wife's solicitors who acted for her in a suit in the Ecclesiastical Court for a divorce.

The Solicitor-General, T. Terrell, and Wise in support, on the ground that the wife, who was abroad in France, had not appeared to the suit.

R. Palmer and Amphlett, contra.

The Lord Chancellor said, that under the 15 & 16 Vict. c. 86, s. 5,<sup>1</sup> the Court was expressly empowered to direct substituted service whenever the justice of the case required. The question in such cases was, whether there was any such person on whom the service might be fitly made, and whether it could be inferred that such service was upon a person impliedly authorised to accept that particular service, or who was certain to communicate the process so served to the party,—the object of all service being to give notice to the party in order that he might appear and resist that which was sought. In the present case, the solicitors were agents with reference to the divorce, and although that did not, as in France, raise the question of the custody of the children, it appeared they had communicated to their client who had a perfect knowledge of all the proceedings. The order for substituted service was therefore right, and she had besides by filing the affidavits precluded herself from taking the objection.

#### Vice-Chancellor Wood.

Roper v. Harrison. June 5, 1854.

#### EQUITY JURISDICTION AMENDMENT ACT.— FILING GENERAL REPLICATION.

The plaintiff had entered an appearance for a defendant resident abroad and who had been required to answer the interrogatories filed, though not served therewith, and an order had been obtained to amend the interrogatories by striking out so much as required such defendant to answer. An application was granted for liberty to the plaintiff to enter a general replication, and for notice to be served on him within seven days of filing the same, such service to be deemed good service.

THIS was an application for liberty to file a

<sup>1</sup> Which enacts, that "the Court shall be at liberty to direct substituted service of such bill or claim, in such manner and in such cases as it shall think fit."

general replication in this suit. It appears that an appearance had been entered for one of the defendants resident abroad, who had been required to answer the interrogatories filed, but who had not been served therewith, and that an order had been obtained to amend the interrogatories by striking out so much as required him to answer the same.

Pryor, in support, cited the 15 & 16 Vict. c. 86, s. 26, which enacts, that "in suits in the said Court commenced by bill, where notice or motion for a decree or decretal order shall not have been given, or having been given where decree or decretal order shall not have been made thereon, issue shall be joined by filing replication in the form or to the effect of the replication now in use in the said Court; and where a defendant shall not have been required to answer, and shall not have answered, the plaintiff's bill, he shall be considered to have traversed the case made by the bill;" and the 28th Order of August 7, 1852, which directs that "where a defendant shall not have been required to answer, and shall not have answered, the plaintiff's bill, so that under the 15 & 16 Vict. c. 86, s. 26, he is to be considered as having traversed the case made by the bill, issue is nevertheless to be joined by filing a replication in the form or to the effect of the replication now in use."

The Vice-Chancellor granted the application, and directed that notice should be served on the defendant within seven days of filing the replication—such service to be deemed good service.

#### Midland Counties Railway Company v. Rieu. Aug 1, 1854.

#### SPECIFIC PERFORMANCE OF CONTRACT.— RAILWAY COMPANY.—COSTS.

A railway company purchased land of a testator, who died, having by his previous will devised the same to his wife for life, and on her death to his nephew, a minor, who was also his heir-at-law. In a suit for the specific performance of the contract, held that the heir-at-law was entitled to his costs of suit up to the hearing.

THIS was a suit by the above railway company for the specific performance of a contract entered into by the testator for the sale of certain real property, which it appeared he had by his will, made before the contract, devised to his wife for life, and after her death to his nephew, then a minor, who was also his heir-at-law.

Wilkinson and Speed for the plaintiff; Cairns for the widow; Selwyn for the nephew.

The Vice-Chancellor said, that in accordance with *Hinder v. Streeten*, 10 Hare, 18, the heir was entitled to have his costs up to the hearing out of the purchase-money.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—“Still attorneyed at your service.”—*Shakespeare.*

SATURDAY, NOVEMBER 11, 1854.

### ‘COUNTY COURTS’ EXTENSION.

#### EQUITABLE AND CRIMINAL JURISDICTION.—WHAT NEXT?

WE lately called attention to the evidence given before the County Court Commissioners in support of two proposals:—the 1st, to establish a Court of Appeal, consisting of a select number of the County Court Judges, by whom all questions arising in the County Courts should be decided, in lieu of the present appeal to the Superior Courts; and the 2nd, to qualify the members of such Appeal Court, or other County Court Judges, for promotion to the Bench of the Superior Courts.<sup>1</sup> We have now to submit to our readers the suggestions for extending the jurisdiction of the County Courts to *suits in Equity*, at least to a limited amount, and to invest the County Court with jurisdiction in *Criminal* and other matters now disposed of at *Quarter Sessions*.

Questions with these views being put by her Majesty’s County Court Commissioners to the witness before them, and answered by a learned and able Queen’s Counsel, now one of the County Court Judges, we presume we cannot be mistaken in concluding that these important and comprehensive topics are seriously under the consideration of the Commissioners, and consequently it is within our province to discuss the matters proposed, which, if adopted, will, we conceive, most seriously affect, not only the practitioners in Chancery, but the Profession in general.

Moreover, if these largely extended powers are at all likely to be conferred on

the sixty County Court Judges,—considering that hitherto each further step forward has been the precursor of new struggles for additional power, it may not be unreasonably asked, after they have become Equity Judges, Masters in Chancery, Chairmen at Quarter Sessions, and perhaps Commissioners in Bankruptcy,—“what next” in their ambitious course will they please to desire? Would they like to absorb all the “original” business of the Superior Courts, become tribunals “in the first instance” in all matters of Law and Equity, and convert the ancient Courts of Westminster into Courts of Appeal? But of this more hereafter. Let us, in the first place, investigate the grounds on which the new equitable jurisdiction is proposed to be erected.

The Chairman of the Commissioners, at their meeting on the 26th May, was Mr. Koe, Q. C., one of the County Court Judges; and, on the examination of Mr. Willmore, Q. C., the learned President inquired whether “It would be desirable that the County Courts should have an equitable jurisdiction to a limited amount?”<sup>2</sup> And the witness answered thus:—“The question seems to divide itself into two branches: first, whether it is expedient that there should be something analogous to the County Court jurisdiction in cases of equity; and next, whether the present County Court Judges should have that jurisdiction. As to the first (the witness said), I do not see how there can be any difference of opinion, because, from all I see and hear in every direction, it is quite clear that, as to the majority of minor cases in Equity, parties have no access to justice at all.”

<sup>1</sup> See Leg. Obs., Oct. 21.

<sup>2</sup> Of course, in the first instance, the small end of the wedge is to be inserted!

The chairman here interposed to strengthen the evidence, saying, "You mean to say that there is an absolute denial of justice?" And the witness responded, "I do;" whereupon he was desired to state the cause of the evil, and his reply was,—“From the expenses swallowing up the whole amount in dispute. There is a universal outcry upon the subject, and in every direction persons volunteered to furnish cases bearing upon this point.” The witness then stated several instances supplied by gentlemen practising in Somersetshire.

With all due deference to the learned counsel—who, being a member of the Common Law Bar, is of course not personally acquainted with the course of Chancery proceedings,—we venture to question the accuracy of the facts which he states on the *hearsay* testimony of others, and which probably applied to the *former* and not the present procedure of the Court. Most of the cases stated are descriptive of the state of things before the recent Statutes and Orders of Court by which,—instead of long bills and answers, decrees followed by references to the Master, elaborate reports and further directions of the Court,—the matter is brought before the Chief Clerk of one of the Judges by a summons, followed by a short certificate of the result of the inquiry and an order of Court,—a course of proceeding as summary, we conceive, as could be devised in the County Court. If, however, a simpler mode of inquiring into and determining questions of Equity, can be invented, the authority of the Judges is sufficient to enable them to adopt it, without burthening the Judges of the County Courts with matters which are at present entirely novel to them, and wherein, with few exceptions, they have no knowledge or experience.

We presume, it is not proposed that the County Court Judges should deal with equitable claims and rights in a purely arbitrary manner, according to each man's hasty notion of the moral justice of the case before him, but that the law and practice of the Court must be governed by settled principles and rules with which the suitors and their legal advisers may be made acquainted. An arbitrary Judge or Officer of Court may indeed do "substantial justice" in many cases by cutting short the inquiry, abridging the expense, and promptly deciding the points in question. The amount of patience of the Judge, his intuitive sagacity, his conscientious feelings, his sternness or urbanity, — not his knowledge of the law,

or acuteness in the investigation of the facts, will determine the issue between the parties, but this mode of settling the rights of suitors, by *chance* rather than known rule, will scarcely be acceptable to our sturdy justice-loving countrymen.

In order that our readers may judge of the cases adduced by Mr. Willmore in support of his opinion, we select eight out of eleven, which are concisely stated:—

"In No. 1, the subject-matter is a sum of 251*l.*, vested in two trustees, who have both meddled with the fund. One of the trustees being insolvent, the bill was filed, and the prayer was, that the money might be brought into Court, and distributed among the beneficiaries. There was no shadow of defence, and a decree was taken by consent. The taxed costs between the parties were over 30*l.*; the defendant's personal costs will be from 20*l.* to 30*l.* more. Instead of this, a plaint might have been entered, and an order made by consent; and with even the present anomaly of the payment of all the Court expenses by the suitors, the costs would scarcely have reached 15*l.*

"No. 2 is now *sub judice*; the sum in question is 400*l.* unaccounted for by a trustee, under circumstances very similar to No. 1. There is no question of fact or equity raised, and the plaintiffs must have the decree. The costs in the matter cannot be much under 100*l.*, if covered by that figure, as we must go into formal proof. It seems to me that the case might be heard in precisely the same way as in No. 1, and at about the same expense.

"No. 3 was too poor a case for a remedy. A testator devised a small freehold property to trustees for sale, the proceeds to be applied to charitable purposes. The trustees sold, and one of them received the money; subsequently he discovered that the devise was void, under the Statute of Mortmain. He retained the money (about 60*l.*), refusing to account either to the *cestui que trust* or the next of kin of the testator, and died without refunding. This case might have been easily dealt with in the County Court.

"No. 4, a testatrix, after one or two legacies, gave the residue of her estate between her brother and sister, and appointed her medical attendant executor. He proved the will, got in the estate, which was very small, and then brought in a medical bill of some 200*l.*, which absorbed the whole. The case was known to be a gross imposition, but where was the remedy; 200*l.* or 300*l.* would not bear a Chancery suit.

"No. 5 is a practical affair. A testator devised his estate to various persons, but took no notice of debts, &c.; his will was prepared by a non-professional person. He was indebted to divers people, and a creditor's suit was instituted. The usual decree was obtained for sale, &c. The only extra expense incurred was the attachment of one of the defendants for not answering under the decree. The property was

sold; the proceeds were over 700*l*. Those proceeds were not sufficient to pay the costs of the suit, and a balance against the plaintiffs (my clients) of some 50*l*. now stands in my office books. You have here five bricks out of my house, I could give you fifty.

"6. *D. H.* was the holder of an estate (for lives under an ecclesiastical corporation) of small value; all the lives died, and without the knowledge of *H. D.*, the agent who received the rents, renewed the estate in his own name, and thus perpetrated a gross fraud on *H. D.*; but the amount is small, and the only remedy is a bill in Chancery, which is worse than the disease.

"7. *H. D.* and *J. V.* are tenants in common of a copyhold estate, of a very small value; the copy was granted to *J. V.*, who executed a declaration of trust, that as to one moiety he was possessed in trust for *H. D.* *V.* is in possession; he commits waste, and refuses to account, and *D.* has no remedy but to file a bill for a partition and for an account, but the property is too small to justify such a proceeding.

"8. *W. R.* purchased a small piece of freehold land in his own name, but with moneys belonging to some poor people; he endorsed on the purchase deed, that such was the fact, and that his name was only used as a trustee. On the death of *W. R.*, his nephew and heir-at-law enters into possession of the land, receives the rents, and sets up a title, alleging that the money received by his uncle was paid; the only remedy is a bill in Equity, the costs of which would exhaust the estate, and ruin the parties."

"There are a variety of other instances: the administration of real estate, where the parties die without any personalty, mortgages, and deposit of deeds, legacies charged upon real estate without power to sell or mortgage, and all such kind of things, which occur in every direction. I took the trouble, as I before stated, to inquire both from lay and professional persons, and the result was a universal reply, that in equitable matters, where the amount is small, a man who chooses to be a knave, can always be so with perfect impunity. If you admit that there should be an administration of justice in these matters at all, you must admit the necessity that some tribunal other than the existing Courts of Equity should be established. And I think it advisable that such tribunal should be the present County Courts.

"It seems to me also, that the very grave question, whether the fusion of Law and Equity is practicable, would be most conveniently, safely, and cheaply tried in the County Courts. Supposing it is to be tried at all, I cannot conceive how it could be done more favourably or at less risk than by giving jurisdiction in equity to the present County Court Judges. This would not, like the amalgamation of the Superior Courts, be taking a step which might be difficult to retrace. In no way could the experiment be more easily made. By no means could you more safely or easily ascertain whether it answered or not. If it did not, the

same process which adds the equitable jurisdiction, could take it away; but I believe the experiment would answer."

Whether some of these suits were commenced, or intended to be commenced, before the recent improvements in the practice of the Court of Chancery, does not appear; but this, we think, is evident—that an inquiry may now be conducted as expeditiously and cheaply before the Chief Clerk of an Equity Judge as before a County Court Judge, if it be intended that all proper parties shall be heard and that the result shall be conclusive and satisfactory.

When speaking of the costs in Chancery as constituting a "denial of justice," it must not be forgotten, that besides the costs (which are really not small)<sup>3</sup> in the County Courts, we should reckon the loss of time and trouble in procuring the plaint, attending the trial, proving the claim, and then searching for the payment of each small instalment (for all which time and trouble the plaintiff receives nothing). These constitute "denials of justice," for innumerable small debts are abandoned to avoid these evils. In the Superior Courts, where the proceedings are conducted by attorneys, the suitor need not attend except once to give evidence; and for this professional service, the wrong-doer should pay. There is, indeed, a mighty delusion about the efficacy of the County Courts. It is absurd to suppose that the unpaid small debts of the whole of England amount only to 1,579,318*l.*, for which plaints were entered according to the last year's Parliamentary return.<sup>4</sup> If returns were obtained from the former Small Debt Courts, we believe the amount would be equal, if not greater.

We come next to the consideration of *Criminal* cases which are now disposed of at *Quarter Sessions*. On this head, Mr. Willmore is asked whether it would be desirable to give jurisdiction to the County Courts in such matters? He says—

"That is a large question. I should suppose that the administration of any kind of justice by persons wholly uneducated and unprepared for it, is a state of things that is peculiar to this country. I do not know that any instance of it exists elsewhere. I practised in the Courts of Quarter Sessions of three counties, throughout a district perhaps the largest in England, except the West Riding, for upwards of twenty years, and was the leader for the latter portion

<sup>3</sup> The fees of Court amount, on an average, to about one-third of the debts recovered!

<sup>4</sup> See 48 Leg. Obs. p. 29.



of that time. I saw a great deal of what occurred there, and if you ask the question, is it desirable to have a professionally educated man as a chairman, I do not see how there can be any difference of opinion upon the subject; I think everybody would say, it would be better to have such a man. Some things curiously extravagant have come under my own knowledge at the Sessions. I have had a chairman say to me upon some point occurring,—‘You know, these are a sort of things that we do not understand anything about.’ Upon one occasion, when I was prosecuting a man, the counsel for the prisoner raised objections to the indictment, which the Court heard; and then, the chairman in open Court said to me, the counsel on the other side,—‘Is there anything in this objection?’ These things bring ridicule, and sometimes dissatisfaction, on the administration of justice.”

It is then observed by the witness that the question put does not extend to *civil matters* at Quarter Sessions, but he thinks it very properly might do so:—

“That inquiry seems to me quite as important as the other. Questions of considerable intricacy arise, as to the removal of poor, rating for their relief, liability to repair roads, &c. With regard to these subjects, everybody who has practised at Sessions, I should think would be of opinion, that it was quite impossible to ascertain beforehand what would be the decision of the Court. I have argued cases very often as a matter of principle, against my own conviction, and upon one occasion, I remember the clerk of the peace, a man of great intelligence, wrote upon a piece of paper, which he threw across the table to me,—‘I think you ought not to have fought that case.’ The magistrates, after consideration, however, decided in my favour; upon which he wrote me another note, saying,—‘I withdraw what I have said.’ A gentleman, who preceded me as leader of sessions, once created great scandal, upon hearing a decision against him, in a very plain case, by offering in open Court, the leader on the other side, to toss up for the next case. All these things, though often laughable, produce discredit and scandal in the administration of justice, and therefore, should be avoided.”

It is supposed, of course, that the dignity of a County Court Judge, would repress the irregularities which occasionally prevail before the “great unpaid” magistrates! The inquiry then diverges into the difficulties of procuring a quorum of justices of the peace on some occasions,—the length of time which elapses between one Session and another,—and the inequality of sentences pronounced by different Chairmen. It is then observed by the learned Commissioner in the Chair, that there are two modes of dealing with the question:—one by giving the jurisdic-

tion of the Court of Quarter Sessions to the County Courts; the other, placing the County Court Judge on the judgment seat in the Quarter Sessions. Mr. Willmore replies that—

“Some of the advantages would be attained by making him chairman of the Quarter Sessions, but there would still be other inconveniences, such as the delay and expense, &c., which would not be removed. I may add, that there is a strong feeling against magistrates deciding in game cases. There is even an impression, that a poacher charged with felony, does not always meet with fair play either in his trial or his sentence. It is a common saying among those people, that they would rather be tried by a ‘Red Judge,’ which means that they would rather be tried at the Assizes.”

He is then asked,—“Would you propose that there should be a sitting twelve times a year, in the principal towns of the Judge’s circuit, for the disposal of criminal matters and those civil matters which are now usually transacted at the Quarter Sessions?” and he says,—“I think that would be an advantage, and I cannot think that the magistrates themselves, if you may judge from the character of their attendance, would object to it. They are certainly always present upon the days when the county business is to be disposed of; and so they ought to be, and such business of course should never be removed from them. But when the other questions arise, unless magistrates have an object in looking after the conviction of a man in their own particular neighbourhood, they seem not to think themselves bound to attend, and, as I have said, there is often a real difficulty in furnishing the two magistrates requisite to form a Court. The chairman must be there, but to get the second you have often to scour the country. I speak of the experience afforded in my own three counties.”

Inquiries are also made of the witness, whether it would be desirable to give jurisdiction in *Bankruptcy* to the County Courts; and he replies in the affirmative. In short, with the exception of revising the lists of voters, it appears from this examination, as well from the evident bearing of the questions, as the prompt answers of the witness—(recollecting always that he is a County Court Judge)—that there is no subject, Civil or Criminal, that ought not to be brought within the jurisdiction of the County Courts, though limited as they were expressly on their creation to “small debts and demands.”

We have thus laid before our readers the substance of this part of Mr. Willmore’s evidence, in order to prepare them for the further changes which it may be expected will soon be agitated in Parliament, if not carried into effect by express enactments.

# NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

## LITERARY AND SCIENTIFIC INSTITUTIONS.

17 & 18 VICT. c. 112.

LANDS to be used as sites for institutions; s. 1.

Chancellor and Council of the Duchy of Lancaster empowered to grant lands for the site of an institution; s. 2.

Officers of the Duchy of Cornwall empowered, upon sufficient authority, to grant land for the site of an institution; s. 3.

If lands cease to be used for the purposes of the Act they shall revert; s. 4.

Persons not having legal estates empowered to convey lands for the purposes of this Act without the concurrence of their trustees; s. 5.

Corporation, justices, trustees, &c., to convey lands for the purposes of this Act; 5 & 6 Wm. 4, c. 69; s. 6.

How such parties may convey; 7 Geo. 4, c. 18; s. 7.

Where part only of lands subject to a rent under lease is conveyed, the rent and fine upon renewal of lease may be apportioned; s. 8.

Liabilities of tenants, and remedies of landlords as to lands not conveyed; s. 9.

Any number of sites may be granted for separate institutions; s. 10.

Grants of site may be made to corporations or trustees to be held for the purposes of the institution; s. 11.

Incorporation of 13 & 14 VICT. c. 23; s. 12.

Form of grants, &c.; s. 13.

Death of donor within 12 months not to invalidate grant; s. 14.

Mode of conveying the lord's interest and that of the copyholder in copyhold land; s. 15.

Application of purchase-money for land sold by any ecclesiastical or corporation sole; s. 16.

Certain clauses of the 8 & 9 VICT. c. 18, rendered applicable to this Act; s. 17.

Trustees may sell or exchange lands or buildings; or may let; s. 18.

Trustees to be indemnified from charges; in default thereof empowered to mortgage or sell the premises; s. 19.

Property of institution, how to be vested; s. 20.

How suits by and against institutions to be brought; s. 21.

Suits not to abate or discontinue; s. 22.

How judgment to be enforced against; s. 23.

Institution may make byelaw to be enforced; s. 24.

Members liable to be sued as strangers; s. 25.

Members guilty of offences punishable as strangers; s. 26.

Institutions enabled to alter, extend, or abridge their purposes; s. 27.

Power to Board of Trade to suspend such alteration, if applied to by two-fifths dissentients; s. 28.

Provision for the dissolution of institutions and adjustment of their affairs; s. 29.

Upon a dissolution, no member to receive profit. Proviso for joint-stock companies; s. 30.

Who is a member; s. 31.

The governing body defined; s. 32.

To what institutions the Act shall apply; s. 33.

Parish defined; s. 34.

Short title of the Act; s. 35.

The following are the title and sections of the Act:—

An Act to afford greater Facilities for the Establishment of Institutions for the Promotion of Literature and Science and the Fine Arts, and to provide for their better Regulation. [11th August, 1854.]

Whereas it is expedient that greater facilities should be afforded for procuring and settling sites and buildings in trust for institutions established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, and that other provisions should be made for improving the legal condition of such institutions; be it therefore enacted as follows:—

1. Any person in England, Wales, or Ireland, being seised in fee simple, fee tail, or for life of and in any manor or lands of freehold, copyhold, or customary tenure, and having the present beneficial interest therein, may grant, convey, or enfranchise, by way of gift, sale, or exchange, in fee simple or for a term of years, any quantity not exceeding one acre of such land, whether built upon or not, as a site for any such institution as hereinafter described; provided that no such grant made by any person seised only for life of and in any such manor or lands shall be valid, unless if there be any person next entitled to the same in remainder, in fee simple or fee tail, and if such person be legally competent, he shall be a party to and join in such grant; provided also, that where any portion of waste or commonable land shall be gratuitously conveyed by any lord of a manor for any such purpose as aforesaid, the rights of all commoners and others, having interest of a like nature in the said land shall be barred and divested by such conveyance.

2. The Chancellor and Council of her Ma-

jefty's Duchy of Lancaster for the time being, by any deed or writing under the hand and seal of the Chancellor of the said duchy for the time being, attested by the clerk of the council of the said duchy for the time being, for and in the name of her Majesty, her heirs and successors, may, if they see fit, grant, convey, or enfranchise, to or in favour of such institution, any land forming part of the possessions of the said duchy, not exceeding in the whole one acre in any one parish, upon such terms and conditions as to the said Chancellor and Council shall seem meet; and where any sum or sums of money shall be paid for the purchase or consideration for such land so to be granted, conveyed, or enfranchised as aforesaid, the same shall be paid into the hands of the receiver-general for the time being of the said duchy, or his deputy and shall be by him paid, applied, and disposed of according to the provisions and regulations contained in an Act of the 48 Geo. 3, c. 73, or any other Act or Acts now in force for that purpose.

3. Any three or more of the principal officers of the Duchy of Cornwall, under the authority of a warrant issued for that purpose under the hands of any three or more of the Special Commissioners for the time being for managing the affairs of the Duchy of Cornwall, or under the hands of any three or more of the persons who may hereafter for the time being have the immediate management of the said duchy, if the said duchy shall be then vested in the Crown, or if the said duchy shall be then vested in a Duke of Cornwall, then under the hands of any three or more of the principal officers of the said duchy, or under the hands of any three or more of the persons for the time being having the immediate management of the said duchy, may, if they think fit, and are so authorised, by deed, grant, convey, or enfranchise to or in favour of any existing or intended institution any land forming part of the possessions of the said Duchy of Cornwall, not exceeding in the whole one acre in any one parish, upon such terms and conditions as to the said special Commissioners or principal officers, or such other person as aforesaid, shall seem meet.

4. Provided, that upon any land so granted by way of gift as aforesaid, or any part thereof, ceasing to be used for the purposes of the institution, the same shall thereupon immediately revert to and become again a portion of the estate or manor or possessions of the duchy, as the case may be, to all intents and purposes as fully as if this Act or any such grant as aforesaid had not been passed or made, except that where the institution shall be removed to another site the land not originally part of the possessions of either of the duchies aforesaid may be exchanged or sold for the benefit of the said institution, and the money received for equality of exchange or on the sale may be applied towards the erection or establishment of the institution upon the new site.

5. Where any person shall be equally entitled to any manor or land, but the legal estate

therein shall be vested in some trustee or trustees, it shall be sufficient for such person to convey the land proposed to be granted for the purpose of this Act, without the trustee or trustees being party to the conveyance thereof; and where it is deemed expedient to purchase for the purpose aforesaid any land belonging to or vested in any infant or lunatic, such land may be conveyed by the guardian or curator of such infant or the Committee of such lunatic respectively, who may receive the purchase-money for the same, and give valid and sufficient discharges to the party paying such purchase-money, who shall not be required to see to the application thereof.

6. Any corporation, ecclesiastical or lay, whether sole or aggregate, and justices of the peace, trustees, Commissioners, holding land for public, ecclesiastical, parochial, charitable, or other purposes or objects, may, subject to the provisions hereinafter-mentioned, grant, convey, or enfranchise for the purpose of this Act such quantity of land as aforesaid, in any manner vested in such corporation, officers, justices, trustees, or Commissioners: provided that no ecclesiastical corporation sole, being below the dignity of a bishop, shall be authorised to make such grant without the consent in writing of the bishop of the diocese to whose jurisdiction the said ecclesiastical corporation shall be subject; provided also, that no parochial property shall be granted for such purpose without the consent of a majority of the ratepayers and owners of property in the parish to which the same belongs, assembled at a meeting to be convened according to the mode pointed out in the Act passed in the 5 & 6 Wm. 4, c. 69, intituled "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales," and without the consent of the Poor Law Board, to be testified by their seal being affixed to the deed of conveyance, and of the guardians of the poor of the union within which the said parish may be comprised, or of the guardians of the poor of the said parish where the administration of the relief of the poor therein shall be subject to a board of guardians, testified by the guardians of such union or parish being the parties to convey the same; and that no property held upon trust for charitable purposes shall be granted without the consent of the Charity Commissioners.

7. Where any officers, trustees, or Commissioners, other than parochial trustees, shall make any such grant, it shall be sufficient if a majority or quorum authorised to act of such officers, trustees, or Commissioners, assembled at a meeting duly convened, shall assent to such grant, and shall execute the deed of conveyance, although they shall not constitute a majority of the actual body of such officers, trustees, or Commissioners; and the justices of the peace may give their consent to the making any grant of land or premises belonging to any county, riding, or division by vote at their General Quarter Sessions, and may direct

the same to be made in the manner directed to be pursued on the sale of the sites of gaols by an Act passed in the 7 Geo. 4, c. 18, intituled "An Act to authorise the Disposal of Unnecessary Prisons in England."

8. If part only of any land held in fee subject to a perpetual rent, or comprised in a lease for a term of years unexpired, shall be conveyed or agreed to be conveyed for the purpose of this Act, the rent payable in respect of the lands subject thereto, and any fine certain or fixed sum of money to be paid upon any renewals of the lease, or either of such payments, may be apportioned between the part of the said land so conveyed or agreed to be conveyed and the residue thereof, and such apportionment may be settled by agreement between the parties following; that is to say, the person for the time being entitled to the rent where the land is held in fee or the lessor or other the owner subject to such lease of the lands comprised therein, the person entitled to the fee subject to the rent, or the lessee or other party entitled to the land by virtue of such lease or any assignment thereof for the residue of the term thereby created, and the party to whom such conveyance as aforesaid for the purpose of this Act is made or agreed to be made; and when such apportionment shall so be made it shall be binding on all under-lessees and other persons and corporations whatsoever, whether parties to the said agreement or not.

9. In case of any such apportionment as aforesaid, and after the lands so conveyed or agreed to be conveyed as aforesaid shall have been conveyed, the person entitled to the fee or other estate in the lands subject to the rent, the lessee, and all parties entitled under him to the lands not included in such conveyance, shall, as to all future accruing rent, and all future fines certain or fixed sums of money to be paid upon renewals, be liable only to so much of the rent or of such fines or sums of money as shall be apportioned in respect of such last-mentioned lands; and the party entitled to the rent charged or reserved shall have all the same rights and remedies for the recovery of such portion of the rent as last aforesaid as previously to such apportionment he had for the recovery of the whole rent charged or reserved; and all the covenants, conditions, and agreements, except as to the amount of rent to be paid, and of the fines or sums of money to be paid upon renewals, in case of any apportionment of the same respectively, shall remain in force with regard to that part of the land which shall not be so conveyed as aforesaid, in the same manner as they would have done in case such part only of the land had been subject to the rent or included in the lease.

10. Any person or corporation may grant any number of sites for distinct and separate institutions, although the aggregate quantity of land thereby granted by such person or corporation shall exceed the extent of one acre, provided the site of each institution do not exceed that extent.

11. Where the institution shall not be incorporated, the grant of any land for the purpose of such institution, whether taking effect under the authority of this Act or any other authority, may be made to any corporation sole or aggregate, or to several corporations sole, or to any trustees whatsoever, to be held by such corporation or corporations or trustees for the purpose of such institution.

12. The provisions of the 14 & 15 Vict. c. 28, shall be applicable to the conveyances of lands in England, Wales, and Ireland made or to be made to trustees, not being corporations, for the purposes of such institutions.

13. All grants, conveyances, and assurances of any site for an institution under the provisions of this Act may be made according to the form following, or as near thereto as the circumstances of the case will admit; (that is to say.)

"I, or we, [or the corporate title of a corporation,] under the authority of an Act passed in the \_\_\_\_\_ year of the reign of her Majesty Queen Victoria, intituled \_\_\_\_\_ do hereby freely and voluntarily, and without any valuable consideration [or do in consideration of the sum of \_\_\_\_\_ to me, or us, or the said

paid] grant and convey [add if necessary, enfranchise] to \_\_\_\_\_ all [description of the premises] and all [my, or our, or the right, title, and interest of the \_\_\_\_\_ to and in the same and every part thereof, to hold unto and to the use of the said corporation and their successors, or of the said \_\_\_\_\_ and his or their [heirs or executors or administrators or successors], for the purposes of the said Act, and to be applied as a site for

and for no other purpose whatever; such to be under the management and control of [set forth the mode in which and the persons by whom the institution is to be managed and directed; in cases where the land is purchased, exchanged, or demised, usual covenants or obligations for the title may be added]. In witness whereof the conveying and other parties have hereunto set their hands and seals [or seals only, as the case may be], this \_\_\_\_\_ day of \_\_\_\_\_.

Signed, sealed, and delivered by the said \_\_\_\_\_ in the presence of \_\_\_\_\_ of \_\_\_\_\_." And no bargain and sale or livery of seisin shall be requisite in any conveyance intended to take effect under the provisions of this Act nor more than one witness to the execution by the conveying party.

14. Any deed executed for the purposes of any institution to which this Act applies, without any valuable consideration, shall continue valid, if otherwise lawful, although the donor or grantor shall die within 12 calendar months from the execution thereof.

15. Where land of copyhold or customary tenure shall have been or shall be granted for the purpose of such institution, the conveyance of the same by any deed wherein the copyholder shall grant and convey his interest, and the lord shall also grant and convey his interest, shall be deemed to be valid and sufficient

to vest the freehold interest in the grantee or grantees thereof without any surrender or admittance or enrolment in the Lord's Court, but the fees (if any) payable by the custom of the manor upon enfranchisement shall be paid to the steward.

16. Where any land shall be sold by any ecclesiastical corporation sole for the purpose of this Act, and the purchase-money to be paid shall not exceed the sum of 20*l.*, the same may be retained by the party conveying for his own benefit, but when it shall exceed the sum of 20*l.* it shall be applied for the benefit of the said corporation in such manner as the bishop in whose diocese such land shall be situated shall, by writing under his hand, to be registered in the registry of his diocese, direct and appoint; but no person purchasing such land for the purpose aforesaid shall be required to see to the due application of any such purchase-money.

17. In cases not otherwise provided for in this Act, the clauses 69, 70, 71, 72, 73, 74, and 78 of the Lands' Clauses' Consolidation Act, 1945, being the 8 & 9 Vict. c. 18, shall apply in respect of the application of the purchase-money of all sites purchased from incapacitated persons, corporations, and trustees hereby empowered to sell, other than the Chancellor and Council of the Duchy of Lancaster and the officers of the Duchy of Cornwall.

18. If it shall be deemed advisable to sell any land or building not previously part of the possessions of the Duchy of Lancaster or Cornwall held in trust for any institution, or to exchange the same for any other site, the trustees in whom the legal estates in the said land or building shall be vested may, by the direction or with the consent of the governing body of the said institution, if any such there be, sell the said land or building, or part thereof, or exchange the same for other land or building suitable to the purposes of their trust, and receive on any exchange any sum of money by way of effecting an equality, and apply the money arising from such sale or given on such exchange in the purchase of another site, or in the improvement of other premises used or to be used for the purposes of such trust; and such trustees may, with like direction or consent, let portions of the premises belonging to the institution not required for the purposes thereof, for such term, and under such covenants or agreements, as shall be deemed by such governing body to be expedient, and apply the rents thereof to the benefit of the institution.

19. The trustees of such institution who, by reason of their being the legal owner of the building or premises, shall become liable to the payment of any rate, tax, charge, costs, or expenses, shall be indemnified and kept harmless by the governing body thereof from the same, and in default of such indemnity shall be entitled to hold the said building or premises and other property vested in them as a security for their reimbursement and indemnification, and, if necessity shall arise, may mort-

gage or sell the same, or part thereof, free from the trust of the institution, and apply the amount obtained by such mortgage or sale to their reimbursement, and the balance (if any) to the benefit of the institution, subject to the restrictions hereinbefore contained with regard to lands given and lands belonging to the duchies aforesaid.

20. Where any institution shall be incorporated, and have no provision applicable to the personal property of such institution, and in all cases where the institution shall not be incorporated, the money, securities for money, goods, chattels, and personal effects, belonging to the said institution, and not vested in trustees, shall be deemed to be vested for the time being in the governing body of such institution, and in all proceedings, civil and criminal, may be described as the money, securities, goods, chattels, and effects of the governing body of such institution by their proper title.

21. Any institution incorporated which shall not be entitled to sue and be sued by any corporate name, and every institution not incorporated, may sue or be sued in the name of the president, chairman, principal secretary, or clerk, as shall be determined by the rules and regulations of the institution, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion; provided, that it shall be competent for any person having a claim or demand against the institution to sue the president or chairman thereof, if, on application to the governing body, some other officer or person be not nominated to be the defendant.

22. No suit or proceeding in any civil Court shall abate or discontinue by reason of the person by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person.

23. If a judgment shall be recovered against the person or officer named on behalf of the institution, such judgment shall not be put in force against the goods, chattels, or lands, or against the body of such person or officer, but against the property of the institution, and a writ of revivor shall be issued setting forth the judgment recovered, the fact of the party against whom it shall have been recovered having sued, or having been sued, as the case may be, on behalf of the institution only, and requiring to have the judgment enforced against the property of the institution only, and requiring to have the judgment enforced against the property of the institution.

24. In any institution the governing body, if not otherwise legally empowered to do so, may, at any meeting specially convened according to its regulations, made any byelaw for the better governance of the institution, its members or officers, and for the furtherance of its purpose and object, and may impose a reason-

able pecuniary penalty for the breach thereof, which penalty, when accrued, may be recovered in any local Court of the district wherein the defendant shall inhabit or the institution shall be situated, as the governing body thereof shall deem expedient: provided always, that no pecuniary penalty imposed by any byelaw for the breach thereof shall be recoverable unless the byelaw shall have been confirmed by the votes of three-fifths of the members present at a meeting specially convened for the purpose.

25. Any member who may be in arrear of his subscription according to the rules of the institution, or may be or shall possess himself of or detain any property of the institution in a manner or for a time contrary to such rules, or shall injure or destroy the property of the institution, may be sued in the manner hereinbefore provided; but if the defendant shall be successful in any action or other proceeding at the instance of the institution, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the institution, and in the latter case shall have process against the property of the said institution in the manner above described.

26. Any member of the institution who shall steal, purloin, or embezzle the money, securities for money, goods, and chattels of the institution, or wilfully and maliciously, or wilfully and unlawfully, destroy or injure the property of such institution, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the institution may be exposed to loss, shall be subject to the same prosecution, and if convicted shall be liable to be punished in like manner, as any person not a member would be subject and liable to in respect of the like offence.

27. Whenever it shall appear to the governing body of any institution (not having a royal charter, nor established by nor acting under any Act of Parliament), which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose, or to amalgamate such institution, either wholly or partially, with any other institution or institutions, such governing body may submit the proposition to their members in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the institution; but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members present at such meeting, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

28. If any members of the institution, being no less than two-fifths in number, consider

that the proposition so carried is calculated to prove injurious to the institution, they may, within three months after the confirmation thereof, make application in writing to the Lords of the Committee of her Majesty's Privy Council for Trade and Foreign Plantations, who, at their discretion, shall entertain the application, and if, after due inquiry, they shall decide that the proposition is then calculated to prove injurious to the institution, the same shall not be then carried into effect; but such decision shall not prevent the members of such institution from reconsidering the same proposition on a future occasion.

29. Any number not less than three-fifths of the members of any institution may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the institution, its claims and liabilities, according to the rules of the said institution applicable thereto, if any, and if not, then as the governing body shall find expedient; provided, that in the event of any dispute arising among the said governing body or the members of the institution the adjustment of its affairs shall be referred to the Judge of the County Court of the district in which the principal building of the institution shall be situated, and he shall make such order or orders in the matter as he shall deem requisite, or, if he find it necessary, shall direct that proceedings shall be taken in the Court of Chancery for the adjustment of the affairs of the institution.

30. If upon the dissolution of any institution there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said institution or any of them, but shall be given to some other institution, to be determined by the members at the time of the dissolution, or in default thereof by the Judge of the County Court aforesaid; provided, however, that this clause shall not apply to any institution which shall have been founded or established by the contributions of shareholders in the nature of a joint-stock company.

31. For the purposes of this Act, a member of an institution shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof; but in all proceedings under this Act no person shall be entitled to vote or be counted as a member whose current subscription shall be in arrear at the time.

32. The governing body of the institution shall be the council, directors, committee, or other body to whom by Act of Parliament, charter, or the rules and regulations of the institution, the management of its affairs is entrusted; and if no such body shall have been constituted on the establishment of the institution, it shall be competent for the members thereof, upon due notice, to create for itself a

governing body to act for the institution thenceforth.

33. The Act shall apply to every institution for the time being established for the promotion of science, literature, the fine arts, for adult instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, of public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs; provided, that the Royal Institution, and the London Institution for the advancement of literature and the diffusion of useful knowledge, shall be exempt from the operation of this Act.

34. The term "parish" shall signify herein any place separately maintaining its own poor.

35. In all deeds, documents, proceedings, suits, and prosecutions, this Act may be cited and described by the name of "The Literary and Scientific Institution Act, 1854."

#### NOTICES OF NEW BOOKS.

*The Common Law Procedure under the Procedure Acts of 1852 and 1854, and the New Rules on Practice and Pleading. With Forms, Tables of Fees, Costs, &c. To which are added an Introduction to the Equitable Jurisdiction of Courts of Law, the Evidence Amendment Statutes, and copious Index.* By PHILIP FRANCIS, Esq., of the Middle Temple, Barrister-at-Law. London: William Maxwell. 1854.

MR. FRANCIS, who last year gave evidence of his industry in editing the "Charitable Trusts' Act," has again come before the Profession with a volume of 380 pages, into which he has compressed,—1st. The Common Law Procedure Act, 1852. 2nd. The Practice and Pleading rules founded thereon. 3rd. The Common Law Procedure Act, 1854. 4th. The Evidence Amendment Acts of 1851 and 1853. And to these he has appended all the cases decided upon those Statutes and Rules down to the present time. We have thus a complete codification of Common Law procedure and practice as it now exists; the authorities are ready to our hands, and a copious index at once enables us to refer with expedition to any one of the subjects treated of to which our practice may require a resort. In addition to this, Mr. Francis has given a very lucid introductory chapter on the equitable jurisdiction of Courts of Law under the Procedure Act, 1854.

The mass of legislation has of late years become so enormous that it is now perfectly well recognised that a lawyer must

not be expected to be acquainted more than superficially with the provisions of modern Acts of Parliament. His duty is to interpret them (according to well-known rules) when they are placed before him, but it is impossible for him to remember their exact phraseology so as to give a safe off-hand opinion on their provisions. It need scarcely, therefore, be added how much the Profession are indebted to gentlemen who will place this multifarious legislation in an accessible shape before them. In fact, editions of the more important modern Statutes have become a necessity in the law. We will proceed to examine how far Mr. Francis has discharged the task which he has for the second time undertaken.

In the first place, we cannot forbear tendering our entire adhesion to his prefatory remarks upon the manipulations which the Act of 1854 underwent in its progress through Parliament. If a Bill be introduced to the Legislature affecting the liberties of the subject, the rights of the Crown, or the privileges of Parliament, it is good that its every section should undergo the scrutiny of each country gentleman in the house. But when a Bill has for its object the amendment of procedure and practice in the Courts, a matter peculiarly technical and unavoidably so, it really is disheartening to find that its provisions are liable to be altered (or as courtesy denominates it, "amended") by persons who never conducted a suit or made up a record, and who know just enough about *special pleading* to be aware that it is *not* something to eat. Even Select Committees of law members are not to be depended upon,—they are often too apt to sew purple patches on to white garments. In fact, the proper course would be, to pass such Bills framed by such Commissions as the present almost as of course: they can be amended at any time, and then will come the time for Select Committees.

We need not dwell upon the annotations of the Act of 1852, or to the practice and pleading rules founded thereon, except to remark that all the judicial decisions subsequent to their enactment have been carefully collated. Such cases as illustrate clauses and rules which have been re-enacted merely, Mr. Francis has not thought it a necessary part of his duty to recapitulate at any length,—they are to be found in books of practice already in use. We propose to confine our notice to the Act of 1854, and to the Editor's introductory

chapter and notes thereon. We may, however, in passing, regret that he has not found time to annex more notes to the clauses relating to ejectment in the Act of 1852, but his excuse would probably be, that many of these sections are re-enactments merely of the old law which it was not the object of his book to elucidate.

Mr. Francis then, in his introductory chapter, seems to apprehend that several questions will arise in respect of the nature and extent of the new equitable jurisdiction. By way of smoothing our way, he sets before us our great Commentators' remarks on the jurisdiction of Courts of Law and Equity respectively, and proceeds to show that the intent of the framers of the Act was not so much to *supersede* Courts of Equity as to remove the necessity of appealing to those Courts, in cases where equity had been wont to interfere, in order to remedy the imperfections of Common Law. Now this is the keystone to the whole understanding of the Act. Let the reader bear well in mind, that it was to enable the Court of Law to finish its work, by establishing the suitor's right in all its requirements, that the new enactments were framed—they were not framed to supersede Equity. Thus, in the well-known case of *Soltan v. De Held*, the plaintiff recovered damages against the defendant for ringing bells to such extent as to become a nuisance, and afterwards had to resort to a Court of Equity to restrain future excessive bell ringing. As far as the Common Law Court went, Mr. De Held might have gone on perpetually chiming, subject to the payment of damages, if he did not mind paying for the pleasure; but *now* the same Court which awards damages, can likewise, in the same suit, prevent a repetition of the offence. So, likewise, if waste be committed, the injured party may, in the same suit, obtain damages for the wrong already done and afterwards against its repetition.

Mr. Francis then gives us a summary of the subjects over which equity has a jurisdiction—a concise statement of the grounds on which discovery may now be obtained, and on which it probably may be resisted in the Courts of Common Law—and here we may notice those on a summons heard on the first of the present month: Mr. Justice Crompton, after consulting Mr. Baron Martin, refused to allow interrogatories, framed with view of discovering the opposite parties' case only. Our attention is next called to proceedings for specific performance at Com-

mon Law, which Mr. Francis sums up as follows:—

"The equitable effect of this power so given to Courts of Law seems to amount to this, that while hitherto it was in the option of any party to a contract to elect, so far as the control of Courts of Common Law extended, whether he would perform his contract or pay a sum of money as damages, it is now left to the party against whom the breach is committed, to elect between enforcing the contract or accepting as a substitute money damages, and *subject to the opinion of the Court, that the latter was not a perfect compensation, specific performance may be enforced.*"

With this we agree, except that we see nothing in the Act to disable the Court from granting a mandamus and also awarding damages for any delay in performing the duty. It must be remembered that the Court will always have a *discretion* in granting a mandamus; this will obviate the inconvenience suggested in the notes that a defendant in breach of promise may (as some would have it) be liable not only to pay damages, but also may be ordered to marry the plaintiff, and thus have to elect between the attachment of the Court and that of the lady; or, what would be still more shocking to the sensitive feelings of the injured dame, some aspiring usher, associate, or briefless barrister might be ordered to espouse her by virtue of the power of the Court to order the act to be done by some other person appointed by the Court, at the expense of the defendant: in either case probably violating the rule "*Consensus, non concubitus, facit matrimonium!*"

In order to entitle a plaintiff to a mandamus, Mr. Francis considers that the *duty* of which performance is to be compelled must mean a *legal duty*. By this we understand him to mean legal as distinguished from *equitable duty*. It cannot be supposed that the more restricted sense of "duty" can have been intended; for, if so, no mandamus could be obtained unless an action on the case for a tort would also lie. It must mean "any obligation for breach of which an action at law for damages is maintainable." A jurisdiction to this extent must be very salutary if controlled by the discretion of the Court, which discretion, we contend, is clearly conferred by section 68. In section 69 we find that a mandamus will lie "*quia timet*," for a plaintiff may claim a mandamus on the ground that "*he may sustain damage.*" We regret that *injunctio* "*quia timet*" cannot also be obtained.

Before we quit the subject of mandamus,



we may observe that we can imagine a case in which this remedy will be attended with some considerable difficulty in a Court of Law, unless proper machinery be introduced to meet it. Suppose a mandamus for specific performance of an agreement to convey real property—there being a dispute about the title—the plaintiff would declare for breach of the agreement, the defendant would then either traverse the breach in terms, in which case the whole intricacies would have to come before a jury in evidence, or he would set out the title he was prepared to give on the face of the record, in which latter case the pleadings would be enormous. There seems therefore to be a necessity for the establishment of some preliminary tribunal before which the title may be sifted, and the substantial point alone submitted to the jury or the Court, as the case may be:—in a word, there must be some machinery erected analagous to that of the Masters' Office. Section 78, as to the specific delivery of chattels, is most valuable, for there are cases in which no money payment could compensate for non-delivery of chattels,—e. g. family pictures, jewels, and the like.

Injunctions are next treated of. We are reminded of the defect just adverted to, that injunctions "*quia timet*" cannot be obtained, except in equity; and it appears that in no case can injunctions be obtained, except by a *plaintiff* in an action. We see no good reason why they should not also be awarded in favour of a defendant in ejectment—to which action, the new *equitable defences* do not seem to be applicable. We have been led to greater length than we intended by the novelty and interest of our subject. We must, however, especially refer our readers to Mr. Francis' remarks and notes on "*equitable defences*," just quoting his opinion that "the intent of the 63rd section is, that whenever relief in equity would be granted to either party by injunction perpetual or conditional to stay proceedings at law, the same grounds shall afford a defence in Courts of Law," but we must receive this, subject to the single exception of ejectment. Equitable defences must be *pleaded*, and there are no pleadings in ejectment.

We have not time at present to do more than refer generally to Mr. Francis' notes on the arbitration clauses—those relating to trial of facts by a Judge alone, and the order of address to the jury (on this latter subject he has a very elaborate note)—the evidence of witnesses and interrogatories.

We are glad to see the custom of London as to foreign attachments made universal—we have heard it denominated a barbarous remedy. It certainly has some of the recommendations of barbarism, viz., simplicity and natural equity.

## FORFEITURE OF LEASEHOLDS.

### LAW OF EJECTMENT.

*To the Editor of the Legal Observer.*

SIR,—I quite agree with the observations of W. and S. C., at page 341 of your last Volume, and have long thought the Law of Ejectment connected with breaches of covenant requires the interference of the Legislature. Leaseholds are the subject of extensive sale, and how many purchases are completed in which breaches of covenant appear, the vendors protecting themselves by the production of the last receipt for rent. I think public policy (notwithstanding the covenants entered into between lessor and lessee) demands an alteration in the law giving all equitable means of relief, in order that this class of property may safely be the subject of sale; for few holders of leaseholds are aware of the serious consequences of breaches of covenant, they merely viewing the property as a kind of commodity to be bought and sold like any other.

As regards the covenant to *insure*, if the property be insured according to covenant, it ought to be considered a performance, notwithstanding previous breaches; and in case of ejectment by reason of the covenant not being complied with by insuring in the required joint names or otherwise, the tenant should be at liberty to stay proceedings on *setting the policy* right and paying costs. In case of ejectment for breach of the covenant to *repair*, the tenant ought to be at liberty to stay proceedings on repairing within a reasonable time;—if for nonpayment of *rent*, taxes, &c., by paying the amount;—if for carrying on a prohibited trade, by discontinuing the trade and restoring the premises, and in like manner for other breaches; because the remedy by ejectment for breach of covenant ought not to be a remedy enabling a landlord (perhaps having a very small pecuniary interest in the property) to enrich himself at the expense of the tenant, who, through some unintentional neglect or oversight, has broken the strict letter of the covenant, without giving him an opportunity of remedying it.

But there is another view to be taken of this subject:—in many cases *several houses* are held under one lease at first granted to one party, who has granted underleases to many others who have no control over the acts of each other, and yet the breach of covenant by one in respect of his house renders the whole of the remaining innocent holders liable to ejectment; but surely this ought to be prevented, and in such cases (independently of the remedies suggested above) the innocent sufferers should be entitled to compel the landlord to grant to them separate leases at the apportioned rents then paid by them. Of course, in all cases, the relief should be granted on all equitable terms, including the payment of costs.

This seems to be a fit subject for the consideration of the Law Societies, and I hope shortly to see an alteration in the law respecting it.

November, 1854.

R. T.

## LAW OF ATTORNEYS.

### AGREEMENT WITH CLIENT FOR INTEREST ON COSTS. — JURISDICTION ON PETITION FOR TAXATION TO CHARGE REAL ESTATE.

It appeared that Mr. William H. Bainbridge had, in 1845, employed Mr. Moss to conduct the necessary litigation for the recovery of certain estates, and that in June 4, 1848, he signed a memorandum whereby, after stating that he was indebted to Mr. Moss in a considerable sum of money on a balance of account, and that it was inconvenient for him to discharge the same, he undertook, in consideration of time being allowed, to pay interest on the balance from time to time upon the principle of annual rests until paid. After the successful termination of the suit, Mr. Bainbridge and his brother signed, on May 30, 1851, an undertaking to charge their real estates with the payment to Mr. Moss of all sums of money and bills of costs, charges, and expenses owing to him by both or either of them, with lawful interest on the same respectively, upon the principle of annual rests. Mr. Moss subsequently delivered his bill of costs, and brought an action to recover their amount, and also filed a bill to enforce his lien on the real estates, claiming to be entitled to compound interest. Mr. Bainbridge thereupon presented his petition for a taxation and the stay of the action.

The *Master of the Rolls* said :—

"There can be no question but that the exertions of Mr. Moss, for a very considerable length of time, have been of a most valuable description, and that if he had, at any time, given up his employment as solicitor, it would probably have been impossible for the petitioner to have recovered the estate. I am also of opinion, as I have often expressed, that the strictness of the law, with respect to dealings between solicitor and client, so far as relates to giving security for costs to be subsequently incurred, is often of very great injury to the client himself.

"Although it may be difficult to overrate the exertions of Mr. Moss in this matter, still I must deal with this case strictly according to law. No doubt, if Mr. Moss had thought fit to send in his bill yearly, and take a bond for the amount at the end of each year, he might, in effect, have obtained compound interest from his client. He might undoubtedly have adopted some such course.

"I have felt somewhat embarrassed from the peculiar mode in which the petition is framed; for it asks me to direct the taxation of the bill of costs, and that in taxing the account 'the Taxing Master may be directed to allow Mr. Moss interest' on the principle therein specified, which the petitioner is willing to 'concede,' even if Mr. Moss is not entitled thereto. Now this Court cannot deal with such a concession. A party may, by consent and arrangement with another party, agree to give him something to which he is not entitled, but the Court cannot deal with the offer of a person to make a concession by way of inducing it to make a particular order, which the other party is not otherwise entitled to. The Court can only deal with cases according to the law.

"I am of opinion that the first letter of the 4th of June, 1848, cannot be enforced against Mr. William H. Bainbridge. It is impossible to refer to the cases which are of familiar occurrence in this Court (*Saunderson v. Glass*, 2 Atkyns, 296, is one), without seeing, that while a solicitor is employed in conducting a litigation for a client, and when the injury to the client, by discharging that solicitor and employing another, would be irreparable (as in the present case), an agreement as to the mode in which the future costs are to be calculated and arranged is one which this Court considers a solicitor cannot enforce against a client.

"But the agreement of May, 1851, appears to me to stand in a different point of view. That was an agreement in respect of a past bill of costs, and to give a lien on the estate for the amount then due.

"It is impossible for me to direct the bill to be taxed and direct that the interest shall be allowed in a particular form, which the petitioner is willing to concede. If I were of opinion, that the letter of the 4th June, 1848, could be enforced against Mr. W. H. Bainbridge, I might give some special directions as

to the mode of taxation, but I am of opinion I cannot direct any special mode of taxation.

"I am also of opinion, that I cannot, upon petition, deal with the agreement of the 30th May, 1851, for a suit has been instituted for the purpose of establishing the agreement for a lien on the estate, for what is due on the bills of costs, with compound interest or annual rests. Upon the construction of this agreement, I purposely abstain from expressing any opinion. It is not merely a charge of what is due from William H. Bainbrigg (which is the subject of the petition before me) but it is also a charge of what is due from both brothers, and this is a charge upon the estate, which may be a perfectly fit and proper agreement to be carried into effect.

"It is also clear, that no order that I can make on this petition will stop the prosecution of that suit, to enforce a different lien and respecting a different matter from that which is now before me. It affects both the brothers instead of one only; and although the order I may make may ascertain the amount due on the bill of costs, it cannot affect the suit.

"I am of opinion, therefore, that in this case, I must order all the bills down to the present time to be taxed in the usual manner, and I shall direct the Taxing Master to certify to me what was due on the 30th of May, 1851, when this agreement was made, and I shall reserve the costs of this petition and of the costs of the taxation. I express no opinion on the merits of the cause, for at present I have not the means of dealing with the agreement of the 30th of May, 1851, even if I had jurisdiction on this petition, because, on this petition, I have no means of giving effect to a lien on the real estates, nor can I affect Thomas P. Bainbrigg." *In re Moss*, 17 Beav. 346.

### POINTS IN COMMON LAW PRACTICE.

#### STAYING PROCEEDINGS IN ACTION BY EXECUTOR UNTIL PRODUCTION OF PROBATE.

THE plaintiff brought an action as executor on a promissory note given by the defendant to the testatrix in her lifetime, but he admitted that he had not obtained probate of the testatrix's will. A rule nisi had been obtained for the production of the probate and for a stay of the proceedings in the meanwhile.

*Jervis*, C. J., said,—“I am of opinion that the rule should be made absolute to stay all further proceedings in this cause until probate of the will of Eleanor Warr, deceased, be taken out by the plaintiff, and until three days after notice thereof, and of the Court by which the same was granted, shall have been given by the plaintiff to the defendant's attorneys. The ground upon which I proceed is, the peculiarity of the case, and the anomalous po-

sition in which the defendant is placed by an apparent oversight of the Legislature. There being confessedly no probate, the defendant is well warranted in thinking that the plaintiff is not executor; and yet he may at any time before trial obtain probate, and that probate would operate from the time from which the will speaks, and so give the plaintiff a title to maintain the action. That would be imposing upon the defendant a grievous hardship. Formerly, if the plaintiff, in declaring, did not make profert of the letters testamentary, the omission was ground of special demurrer; and, if profert were made, the defendant was entitled to oyer of the will; and so he had an opportunity of ascertaining whether or not the plaintiff filled the character he represented. Profert and oyer, as well as special demurrers, being abolished,<sup>1</sup> the defendant would be without remedy if the Court had no power to afford him relief. I think the Court has a general superintending power to prevent its process from being used for the purpose of oppression and injustice; and where, as in the present case, it manifestly appears that a plaintiff has abused the process of the Court by calling himself executor when he in fact is not so, I think our Common Law jurisdiction is amply sufficient to enable us to compel him to produce the instrument upon which he founds his right to maintain the action, or to stay the proceedings until he places himself in a situation to do so.” *Webb v. Adkins*, 14 C. B. 401.

### LAW OF EVIDENCE.

#### BURTHEN OF PROOF.—WHETHER “ESTATE” IN WILL PASSES REAL ESTATE.

THE burthen of proof as to the insufficiency of the word “estate” in a will, to pass real estate, lies on the person who seeks to restrict the operation of the word to personalty. *Patterson v. Huddart*, 17 Beav. 210.

#### AS TO FALSITY OF REPRESENTATIONS ON FORMATION OF COMPANY.

“Persons who take shares upon the formation of a company, and the directors who form it, are contracting parties, and the prospectus and advertisements issued by the directors are the representations, *quæ dant locum contractui*. If these representations contain false statements, which cannot be made good by the persons who made them, the person who took those shares,

<sup>1</sup> 15 & 16 Vict. c. 76, s. 55.

on the faith of them, may, in my opinion, avoid the contract, and require the founders of the company to restore him to the position he was in when he took these shares. \* \* \*

And it is always to be borne in mind, in suits of this nature, that the burthen of proving that the representations were false, and that he acted on the faith of them, lies upon the plaintiff."

Per the Master of the Rolls in *Jennings v. Broughton*, 17 Beav. 234.

## LECTURES AT THE INCORPORATED LAW SOCIETY.

THE Lectures in the Hall of this Society are delivered every Monday and Friday evening at eight o'clock precisely.

Mr. SHEE will lecture on the following subjects of Equity :—

1. The Separate Estate of Married Women, as recognised and protected by the Court of Chancery.

2. The Principles in reference to which the Court recognises and enforces the Wife's equity to a Settlement of her own Property.

3. The Principles on which the Court of Chancery acts in the setting aside and reforming of Contracts; and in particular that part of the subject which relates to the purchase of Reversionary Interests from Expectant Heirs, &c.

The last two or three Lectures of the course will be devoted to subjects relating to the Law and Practice of Bankruptcy.

Mr. BAGGALLAY will treat of the Law relating to the Sale and Purchase of Estates under the following heads :—

1. Particulars and Conditions of Sale.—Attention will be particularly directed to the extent of the Vendor's liability to disclose defects in his Title,—the effects of misrepresentation, whether wilful or undesigned,—the use of Special Conditions,—the liability of the Purchaser to pay interest on his purchase-money when the sale is not completed at the appointed time, &c.

2. Agreements for Sale.—The Statute of Frauds, the admissibility of parol Evidence to vary or annul written instruments, and the mode in which agreements may be enforced, will be the chief points considered under this head.

3. Investigation of Title.—And herein of the Abstract,—the comparing of the Abstract with the Documents,—the root of the Title,—the Evidence to be adduced in support of the Title, &c.

4. The Conveyance.—Under this head attention will be particularly directed to the effect of Covenants.

Mr. CHARLES POLLOCK's Course of Lectures will comprise the Elementary Principles

of the following leading heads of Mercantile Laws, viz. :—

1. Principal and Agent.

2. Partnership.

3. The Contract of Sale.

The last two Lectures will be devoted to subjects of Criminal Law, with the recent Amendments made by Lord Campbell's Act, 14 & 15 Vict. c. 100, treating in particulars of,

1. Larceny.

2. Embezzlement.

3. Obtaining Goods or Money under False Pretences.

4. Forgery.

## PUBLIC EXAMINATION OF THE STUDENTS OF THE INNS OF COURT.

Held at Lincoln's Inn Hall, on the 30th and 31st October, and the 1st November, 1854.

THE Council of Legal Education have awarded to—

Alex. Edward Miller, Esq., Student of Lincoln's Inn, a Studentship of Fifty Guineas per Annum, to continue for a period of Three Years.

William Smart, Esq., Student of Lincoln's Inn, a Certificate of Honour of the First Class.

Charles Andrew Prescott, Esq., Student of Lincoln's Inn; H. Maxwell Philip, Esq., Student of the Middle Temple; and Robert Scott, Esq., Student of the Middle Temple, Certificates that they have satisfactorily passed a Public Examination.

By Order of the Council,

(Signed) RICHARD BETHELL,  
Chairman.

Council Chamber, Lincoln's Inn,  
3rd November, 1854.

## SELECTIONS FROM CORRESPONDENCE.

### OBJECTIONS TO BARRING DOWER.

To the Editor of the Legal Observer.

SIR,—Is not the practice of Conveyancers in inserting the clause depriving a widow of dower a mistake? It only operates on an intestacy, as in the cases to which the clause applies,—viz., where the marriage was since January, 1834, the husband's conveyance or will is sufficient to bar the dower; and surely where a man dies intestate his widow's natural right to dower is quite as strong and well-founded as the heir's right to the succession. The rationale of the old uses to bar dower was very different, as the husband had no power over his wife's title to dower, which could only be got rid of by a troublesome and expensive mode of conveyance; and this impressed upon practitioners the necessity of preventing the title from attaching, and I imagine they continue to do so from habit, without reflecting that the reason for the bar has ceased, or con-

sidering the injury which may be done to the widow.  
FAIRPLAY.

#### RECOVERING ATTORNEY'S COSTS IN AUSTRALIA.

A., whilst he resided in London, became indebted to B., a solicitor, in the amount of a bill of costs. A has settled in Australia. Is it incumbent on B. to deliver his bill signed the usual period before action brought? I believe an Act of the Legislature provides for the mode of substantiating and recovering debts in the colonies by affidavit of the debt.

L.

#### RENEWAL OF CERTIFICATES.

##### Queen's Bench.

*On the last day of Michaelmas Term, 1854.*

Arnison, William Burra, 15, King's Road, Pentonville; and Granville Square.  
Barber, Wm. Henry, 25, Surrey St., Strand.  
Berners, Henry, jun., 122, Albany Street.  
Church, Francis, Woodland Cottages, Great Shefford; and Hungerford.  
Cleather, William, Edgbaston.  
Littlewood, John William, Cook's Court, Brooke Place; and Park Place.  
Matthews, J. Bogle D. Graham, Great James Street; and Twickenham.  
Parker, Charles Lewes, 19, Harrington St.; and Albert Street.  
Smart, David, Cardiff.  
Underwood, Hugh Frederick, Hereford.  
Veal, Richard. Minshull, Tillington, near Petworth.

*On the 27th November, 1854.*

Adams, Henry, Paignton, Dptford Court, Geelong, Balaarat, Colac, and Collingwood, Australia.  
Allen, Mundeford, Chigwell Row; and Gt. Ormond Street.  
Anderson, Henry, South Shields.  
Bartley, Nehemiah, 2, Russia Lane, Victoria Park; and Burnham Square.  
Beetholme, Jno. L., 162, Southwark Bridge Road; and Queen's Prison.  
Biller, George, 12, St. Petersburg Place, Bayswater.  
Blake, John Dyer, 12, Compton Street East, Brunswick Square.  
Boys, Alfred W., 116, Tachbrook Street, Pimlico; and Ponsonby Terrace.  
Boxon, Fk., 9, Gloucester Cottages, Albany Road, Camberwell; Sarah Place.  
Bullock, George, Kingston-upon-Hull.  
Campbell, James, Oldham.  
Cross, Richard Cantley, Folkestone; and Kirby Stephen.  
Crush, Joseph, 21, Brunswick Street, Trinity Square; and Laurence Pountney Lane.  
Day, John, jun., 39, Spencer Street, Clerkenwell; Palmer's Road, Hoxton.  
Druce, Alexander Devas, Denmark Hill, Camberwell.  
Farrar, Francis, 39, Maismore Square, Old Kent Road.

Gay, Aaron Wt., 5, Southampton Street; St. Pancras; Angelus Square.

Gibson, John Robinson, Snells Park, Edmonton.

Hall, James Turbutt, 18, Eagle Street, City Road.

Hambury, Thomas James, 26, Maismore Square, Old Kent Road.

Harwood, Joseph, 69, Gloucester Crescent, Regent's Park.

Hooper, John, Londoun Place, Brixton.

Hulbert, Thomas, Fordington; and Dorchester St. Peter.

Humphreys, William Joseph, Abergale.

Jackson, Henry, Derby.

James, Nathan S., 130, Blackfriars' Road, Southwark; and Dever Road.

Jukes, Jas. Augustine, 36, Goswell Street.

Lawrance, John Busley, 2, New Road, Peckham.

Morgan, John, 3, Edith Grove, New Brompton.

Nealor, William, Birmingham.

Padmore, Harrison, Beaumont St., Fulham Fields, Pomona Place.

Pain, John David, Newport.

Parker, Thos., Taviscoek Row, Covent Gar.

Parkes, Thomas W., Southwood Lane, Highgate; and Hereford.

Pearson, Thomas, Whitby.

Pennington, Jas. M., 6, Upper George St., Bryanstone Square; Alfred Place.

Pinwill, John Morgan, 9, Grosvenor Park, South, Camberwell Road; Lorrimore Road, Walworth.

Poleford, William, 39, Nicholas Lane, Lombard Street.

Rhodes, Frederick Jackson, Market Rasen.

Roberts, Samuel, Congleton; and Aethury.

Robertson, Wm., 3, Union Court, Liverpool.

Robinson, Alfred M., 4, Gothic Cottages, Regent's Park; and Gray's Inn Square.

Rogers, Wm., 2, Montague Street, Russell Sq.; Newman Street; and Woburn Place.

Salaman, Joseph Seymour, 36, Baker Street, Portman Square.

Sampson, Francis, 20, Nutford Place, Bryanstone Square.

Sanders, Robt. M., 2, Great Ormond Street, Queen's Square; Robert St.; and New Inn.

Sherwood, John, Shewater House, Byfleet; Boulogne-sur-Mer.

Simpson, Thomas, Yarm.

Smith, Henry, Bristol.

Smith, John Ferguson, 2, Egrement Place, New Road.

Swann, T. G., Paradise House, Liverpool Road, Islington.

Sykes, John, Ulverstone.

Thompson, John Willock, Lancaster.

Tomkins, Gregory James Sarmon, Luard Street, Islington.\*

Wallis, Wm. T., 13, Drayton Gr., Old Brompton; Gloucester Gr. West.

Waring, Henry, 23, Union St., Swansea.

Wight, George John, Calcutta.

Willins, George, 6, Great Tower Street.

\* This application is to the Court of Com. Pleas.

## NOTES OF THE WEEK.

### MICHAELMAS TERM EXAMINATION.

THE Candidates who have given notice for the Examination of this Term are no less than 183,—an unusually large number; and to be accounted for on the erroneous conjecture that a classical and mathematical examination was about to be instituted at an early period, and that it would apply to those about to undergo their legal examination. Of course, ample notice will be given before the new regulation will come into effect.

The notices in the printed List of *Admissions* amount to 150, but many of the Candidates gave notice of examination only, and if they pass will give a future notice of admission.

A considerable proportion have not left their testimonials of service in due time, and consequently are not entitled to be examined on the 14th instant.

### NEW QUEEN'S COUNSEL.

*Peter Erle, Esq.*, Chairman of the Charitable Trusts' Commissioners. Called to the Bar by the Middle Temple, June 1, 1821.

*Thomas Phian, Esq.*, M. P. for Bath, Recorder of Devonport, Counsel to the Board of Inland Revenue. Called to the Bar by the Inner Temple, Nov. 20, 1840.

*Edmund Beckett Denison, Esq.*, M. P. for the West Riding of Yorkshire. Called to the Bar by Lincoln's Inn, Nov. 22, 1841.

*Robert Porrett Collier, Esq.*, M. P. for Plymouth, Recorder of Penzance. Called to the Bar by the Inner Temple, Jan. 27, 1843.

### LAW APPOINTMENTS.

THE Queen has been pleased to grant to *John Thomas Abdy, LL.D.*, the office of Reader of the Civil Law in the University of Cambridge, in the room of Henry James Sumner Main, LL.D., resigned.—From the *London Gazette* of Oct. 31.

*Charles William Moore* and *Lauriston Winterbotham Lewis, Esqrs.*, have been appointed joint Clerks to the Burial Board of the parish of Tewkesbury.

*Mr. John Crick, Solicitor*, has been appointed Clerk to the Burial Board for the Parishes of All Saints and St. Peters, Maldon.

*Mr. Charles George Bannister*, has been appointed Solicitor to the Board of Ordinance, in the room of Mr. Thomas Clarke, deceased.

The Queen has been pleased to direct Letters Patent to be passed under the Great Seal, appointing *Robert Baynes Armstrong, Esq.*, one of her Majesty's Counsel, to be one of her Majesty's Commissioners for inquiring into the present state of the river Tyne.—From the *London Gazette* of Nov. 7.

### COUNTY COURT FEES.

The Lords of the Treasury have ordered a reduction of the fees for searching in the Registry Office.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*In re Watson.* Nov. 3, 1854.

**BANKRUPTCY.—SUFFICIENCY OF DEBT TO SUPPORT PETITION FOR ADJUDICATION.**

*Quære, as to the sufficiency of the debt to support a petition for adjudication in bankruptcy, of a creditor who had sued a bankrupt, and had taken him in execution, and had unsuccessfully opposed his discharge under the Insolvent Debtors' Act.*

THIS was a petition to annul an adjudication in bankruptcy, which had been obtained on the petition of a creditor who had sued the bankrupt for a debt, and taken him in execution, and had unsuccessfully opposed his discharge under the Insolvent Debtors' Act. The Commissioner held, that as the discharge had taken place without the creditor's assent, the judgment was not satisfied by the taking into execution of the debtor, and that the debt would therefore support the petition.

*Bacon* and *Flather* in support, cited *Cohen v. Cunningham*, 8 T. R. 128.

*W. M. James* and *Bagley*, contra.

The Lords Justices directed the petition to stand over, with liberty to bring an action at law.

### Vice-Chancellor Kindersley.

*Mathison v. Clark.* Nov. 4, 1854.

**AUCTIONEER.—CHARGES FOR SALE WHERE MORTGAGOR IN POSSESSION.**

*Held, that an auctioneer, the assignee of a mortgage, is not entitled, having entered into possession, to charge for his personal trouble, &c., on a sale by auction under the power contained in the mortgage.*

It appeared that certain property in the Harrow Road was mortgaged in March, 1847, with the usual power of sale, and that in January, 1848, the money was called in and the mortgagor became bankrupt. Mr. Clark, the auctioneer, afterwards took an assignment of the mortgage, and in March, 1851, he sold under the power. The chief clerk having disallowed his charges for personal trouble and expenses and commission on the sale, the case now came on by adjournment from chambers.

*Bevir* for Mr. Clark; *Pryor*, contra.

The Vice-Chancellor said, that a trustee could not in equity, as against his *cestui que trust*, make a profit in the execution of the trust, and that the rule applied where he was a partner in a firm. Although a mortgagee, as such, was not necessarily a trustee, yet if he were in possession he was one as being accountable for any surplus. Mr. Clark was, therefore, not entitled to charge for personal

trouble attending the sale, but only the usual items, except for the time when he was not in possession.

*Phillips v. Powell.* Nov. 6, 1854.

CONSTRUCTION OF WILL.—VENDOR AND PURCHASER.—TITLE.—COSTS.

*A testator gave all his real estate to his wife, with power of sale during her life, and after her death, one moiety as she might by will appoint, and the other to his sister. The sister died before the wife, who was her representative, and sold the real estate to the defendant. An objection was taken that she could only make a good title to one moiety, and that portion of the purchase-money was paid, and the defendant's bond given for the remainder, subject to a case for the opinion of the Court: Held, that the wife as the sister's representative could make a good title to the whole, but that the case admitted of doubt, and was properly brought before the Court, but no costs were given on either side under the circumstances.*

THE testator, by his will, gave all his real and personal estate to his wife, with a power of sale over the whole during her lifetime, and after her death, one moiety as she might by will appoint, and the other moiety to his sister. It appeared that the wife sold all the real estate to the defendant, who objected that she could only make a good title to half the property, and accordingly paid that proportion of the purchase-money, giving his bond for the remainder, subject to the decision of this Court whether she could make a good title. The testator's sister died before the widow, who was her representative.

*Glasse, Renshaw, Salmon, and Karslake, for the several parties.*

The Vice-Chancellor said, that the wife as representing the testator's sister was entitled to the purchase-money held back by the defendant, but that there was a sufficient doubt to justify the opinion of the Court being taken. The whole purchase-money ought strictly to bear the costs, but as one moiety had been withdrawn under the arrangement between the parties, no costs would be given to either party, but the payment of remainder of the purchase-money be directed.

*Vice-Chancellor Stuart.*

*Hammerton v. Milnes.* Nov. 6, 1854.

TRUSTEE.—REMOVAL ON BANKRUPTCY.—IMPROPER CONDUCT.—COSTS OF SUIT.

*Held, that the bankruptcy of a trustee is a sufficient cause for his removal from the trust.*

*Where he had acted improperly by distraining after his bankruptcy on a tenant who had paid, held that he was not entitled to his costs of suit.*

*A new trustee was not appointed in his stead, the property being small.*

THIS was a suit for the removal of a trustee and executor under a will, upon his becoming a bankrupt, and having interfered in the management of the estate by distraining after the issue of the fiat against him on a tenant who had paid his rent.

*Elmsley and E. L. Pemberton for the plaintiff; Bacon and Little for the bankrupt trustee; Bagshawe, Sheffield, W. H. Bennet, and Wood for other parties.*

The Vice-Chancellor said, that the bankruptcy was a sufficient reason for the removal of the trustee, in accordance with the decision in *Bainbrigg v. Blair*, 1 Beav. 495; and he had besides acted improperly in distraining. He would therefore be removed without being allowed his costs of suit, the costs of the other parties to come out of the fund, and, as the property was small, no trustee would be appointed in his stead.

*Vice-Chancellor Wood.*

*In re Metropolitan Carriage Company.* Nov. 2, 1854.

WINDING-UP ORDER.—MOTION TO DISCHARGE BY CONTRIBUTORY.—LACHES.

*An official manager had been appointed in April, 1853, at a meeting which the applicant attended, and in July, 1854, he was summoned as a contributory, when he objected to the order of winding-up: Held, refusing a motion with costs to discharge the winding-up order, that the application was too late.*

THIS was a motion to discharge an order for the winding up of the above company. It appeared that an official manager had been appointed in April, 1853, at a meeting which the present applicant attended, but that he had not objected to the order until July last, when he was summoned as a contributory.

*Rolt and Burdon in support, on the ground that the winding-up order had been obtained by the suppression of the fact, that the company was established upon the understanding the whole of the deposits should be returned with the exception of 1s. per share, in the event of the whole of the proposed capital not being subscribed for.*

*Roxburgh for the official manager.*

The Vice-Chancellor said, that the delay on the part of the present applicant was fatal, and that the argument of his being unable to apply before he was placed on the list of contributories was not good. The motion would be refused, with costs.

*Court of Queen's Bench.*

*Mackenzie v. Sligo and Shannon Railway Company.* Nov. 2, 1854.

JUDGMENT CREDITOR—SCI. FA. AGAINST SHAREHOLDER IN COMPANY WHERE WINDING-UP ORDER.

*A judgment creditor of a railway company, against whom an order for winding-up,*

under the 11 & 12 Vict. c. 45, had been made, and an official manager appointed, had applied to the Master to obtain payment out of a sum standing to the credit of the official manager, but without success, as questions were pending as to the liability of the directors: Held, that he was entitled to a rule absolute for a sci. fa., under the 8 Vict. c. 16, s. 36, against a shareholder, as there was no reasonable prospect of payment being obtained from the company.

THIS was a rule nisi under the 8 Vict. c. 16, s. 36,<sup>1</sup> for a sci. fa. against the goods of Mr. Ormsby Gore, one of the shareholders in the above company, against which the plaintiff had obtained judgment. The rule had been enlarged in order that the plaintiff might apply to the Master to obtain payment out of a sum standing to the credit of the official manager of the company, but the application had been refused, there being various questions pending as to the liability of the directors.

Wordsworth showed cause against the rule, which was supported by Raymond.

The Court said, that the Winding-up Act, 11 & 12 Vict. c. 45, did not interfere with the right of a judgment creditor to obtain execution against the goods of a shareholder, upon his being unable to enforce it against the company. In the present case there was no reasonable prospect of the plaintiff obtaining such satisfaction from the company, and the rule must therefore be made absolute.

*Oliver v. Sing.* Nov. 4, 1854.

COMMON LAW PROCEDURE ACT, 1854.—  
ACTION FOR FREIGHT.—QUESTION FOR  
JURY.—CUSTOM.

*A motion was refused for a rule nisi under the 17 & 18 Vict. c. 125, s. 3, for an order to refer to arbitration an action for freight, where the defendant claimed to deduct a sum for the injury by the master of a quantity of timber, part of the cargo, in order that it might be packed more conveniently, and where the plaintiff urged a custom to that effect at Quebec.*

THIS was a motion for a rule nisi under the 17 & 18 Vict. c. 125, s. 3,<sup>2</sup> for an order to

refer to arbitration this action, which was for freight. It appeared that the defendant claimed a deduction by reason of the master having improperly injured part of the cargo, which consisted of timber, by cutting off some of the lengths so as to pack them more conveniently. The plaintiff urged that such a custom existed at Quebec.

*Atkinson, S. L.*, in support.

The Court refused the application.

*Gurney and others v. Womersley.* Nov. 4, 1854.

BILL OF EXCHANGE.—LIABILITY OF BILL  
BROKERS WHERE FORGED, AS PRINCIPALS  
TO BANKERS.

*The defendants, who were bill brokers, had taken a bill to the plaintiffs for discount, endorsed by A., and they charged A. with six per cent. discount, and half per cent. commission,—the plaintiffs charging the defendants five per cent. only. The bill proved a forgery: Held, that the defendants were liable as principals in an action by the plaintiffs for money had and received, inasmuch as the two transactions were separate and distinct, and a different rate of discount charged.*

THIS was a motion for a rule nisi to enter the verdict for the defendants or for a new trial, of this action which was brought for money had and received against the defendants, who were bill brokers. It appeared on the trial before Lord Campbell, C. J., at the Guildhall Sittings after Trinity Term last, that the defendants had taken a bill from a person named Anderson to the plaintiffs, who were bankers, for discount, and that on Anderson's endorsing it, they discounted it at five per cent. The de-

such Court or Judge, upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the Court, or in country causes to the Judge of any County Court, upon such terms as to costs and otherwise as such Court or Judge shall think reasonable; and the decision or order of such Court or Judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred."

And s. 4 enacts, that "if it shall appear to the Court or a Judge that the allowance or disallowance of any particular item or items in an account depends upon a question of law fit to be decided by the Court, or upon a question of fact fit to be decided by a jury, or by a Judge upon the consent of both parties as hereinbefore provided, it shall be lawful for such Court or Judge to direct a case to be stated, or an issue or issues to be tried; and the decision of the Court upon such case, and the finding of the jury or Judge upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive."

<sup>1</sup> Which enacts, that "if any execution, either at Law or in Equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient whereon to levy such execution, then such execution may be issued against any of the shareholders to the extent of their shares respectively in the capital of the company not then paid up."

<sup>2</sup> Which enacts, that "if it be made appear, at any time after the issuing of the writ, to the satisfaction of the Court or a Judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, it shall be lawful for



defendants charged Anderson six per cent. and half per cent. commission, and handed him over the proceeds. The bill turned out to be a forgery, and Anderson was transported, whereupon the plaintiffs brought this action to recover the amount, and obtained a verdict.

*Bramwell* in support, on the ground that the defendants were agents and not principals.

The Court said, that the fact of distinct rates of interest having been charged as between the plaintiffs and the defendants, and the defendants and Anderson, showed that the transactions were distinct; and as to the contract between the plaintiffs and the defendants, the latter were principals. With regard to the forgery not being known to them, they represented the bill to be a genuine acceptance, whereas it was of no value, and the rule must be refused.

#### Court of Common Pleas.

*Griffiths v. Teeching.* Nov. 4, 1854.

**ACTION FOR SEDUCTION. — TEMPORARY SERVICE WITH DEFENDANT.**

*In an action by the plaintiff for the seduction of his daughter, it appeared that the plaintiff had consented to her attending the defendant's shop in the absence of his wife, who, on her return, had paid for her services: Held, that the temporary service was not inconsistent with the relation of servant legally existing between the plaintiff and his daughter, and that he was entitled to recover.*

THIS was a motion for a rule nisi to enter the verdict for the defendant, in this action for the seduction of the plaintiff's daughter and servant, on the plea denying she was such servant. It appeared that the plaintiff had consented to her attending the defendant's shop upon his wife's going into the country, and that the defendant had seduced her. The girl had been paid by the defendant's wife on her return home.

*Prentice* in support.

The Court said, that the temporary service at the defendant's was not inconsistent with the relation of servant legally existing between her and the plaintiff, and the rule was therefore refused.

*Zucoani v. Baxendale and others.* Nov. 6, 1854.

**LIABILITY OF CARRIERS FOR IMPROPER ROADWAY TO THEIR PREMISES FOR INJURIES BY WAGGONS.**

*The roadway to a yard in the occupation of carriers was so steep that their waggons could not be stopped, and they had on two occasions injured the plaintiff's shop which was opposite. The jury found it was negligence to have such a roadway, and assessed the damages at 4l. and 14l. 10s. on the several occasions, the defendants having paid 10l into Court: Held, that the verdict would not be disturbed.*

THIS was a motion for a rule nisi to enter the verdict for the defendants, or for a new trial, in this action, which was brought against the defendants, who were carriers, to recover damages for injuries done to the plaintiff's shop front on two occasions through the defendants' waggons having run against it. The defendants paid 10l. into Court, but on the trial before *Jervis*, L. C. J., the jury found a verdict for the plaintiff, with damages 8l. 10s. beyond the sum paid into Court, assessing the several damages at 4l. and 14l. 10s.

*Byles*, S. L., in support, on the ground that the payment into Court only admitted one instance of negligence, which was the one for which 4l. was assessed, and that there was no evidence of negligence on the other occasion.

The Court said, that the road to the entrance of the defendants' yard, opposite which was the plaintiff's shop, was so steep, that their waggons could not be stopped, and the jury had found, upon the question of negligence being left to them, that it was negligence to have such a roadway. The rule would therefore be refused.

*Lawson v. Shaw.* Nov. 6, 1854.

**ATTORNEY AND CLIENT.—RIGHT TO COSTS FOR CONDUCTING PLAINT IN COUNTY COURT.**

*Held, that an attorney is entitled to recover the costs of conducting a plaint in the County Court, notwithstanding the scale of charges under the 15 & 16 Vict. c. 54, s. 1, has not been promulgated.*

THIS was a motion, pursuant to leave reserved, for a rule nisi to reduce the damages in this action, which was brought to recover the amount of the bill of costs of an attorney, part of which was for conducting a plaint in a County Court. On the trial, *Jervis*, L. C. J., held, that the plaintiff was entitled to recover such costs, and directed a verdict accordingly, subject to this rule.

*Lush* in support, referred to the 15 & 16 Vict. c. 54, s. 1, which enacts, that "it shall be lawful for the Lord Chancellor from time to time to appoint five of the Judges of the Courts holden under an Act of the 9 & 10 Vict. c. 95," "from time to time to frame a scale of costs and charges to be paid to attorneys in the County Courts, to be allowed as between attorney and client and as between party and party," "and in no case upon the taxation of the costs between attorney and client shall any charges be allowed not sanctioned by the aforesaid scale, unless the clerk is satisfied by writing under the hand of the client that he has agreed to pay such further charges, and no attorney shall have a right to recover at law from his client any costs or charges not so allowed on taxation."

The Court said, that the scale had not been yet prepared, but that was no reason attorneys should have nothing for their labour in the meanwhile, and the rule would be refused.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—“Still attorneyed at your service.”—*Chalmers.*

SATURDAY, NOVEMBER 18, 1854.

### THE LAWYERS AND THE PRESS.

We are induced again to advert to the conduct of *the Press*, as one of the prominent topics at the recent aggregate meeting at Leeds, in consequence of the notice taken of the subject by the *Morning Post* of the 13th instant. The Attorneys cannot but feel indebted to the Editor of that journal for the following fair and candid acknowledgment of their right to assemble and discuss their claims and grievances, and the various law reforms by which they are affected.

“Some short time ago” says the Editor “an aggregate meeting of Solicitors and Attorneys was held at Leeds, to consider various matters connected with that branch of the Profession, of which they are members. We have not the slightest desire, or even the slightest right, to question the propriety of such a meeting. Personal interests, professional privileges, the effect of recent law reforms, and further anticipated changes, are all questions which may fairly and honourably engage the attention of the gentlemen of the second branch of the Profession. The Bar has its society for the amendment of the law, which is the able and constant exponent of the views of a considerable portion of the first branch of the Profession, and the Solicitors have undoubtedly an equal right, by means of public meetings in London or the Provinces, to make their opinions and grievances known to the public. We should not now refer to the meeting held at Leeds, if we had not noticed, with much surprise and regret, that some gentlemen who addressed it thought it consistent with truth and justice to make an open and indiscriminate attack upon the newspaper press. Our surprise and regret has been proportionately increased by finding that violent and undeserved attack endorsed and re-echoed by an able and well-informed legal contemporary, which very properly is recognised as the organ of the Metropolitan Solicitors.

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To quarrel with the press as a body is generally a very hazardous experiment, and those gentlemen who have the hardihood to engage in such a warfare should certainly, in the first instance, take care to be correct in their facts. The *Legal Observer*,<sup>1</sup> in an article ‘On the State and Prospects of the Second Branch of the Profession,’ says:—‘Another topic at the aggregate meeting was the large share of unpopularity in which the Attorneys are held by the press.’”

The Editor then observes, that—

“It is no portion of our duty to stand forward as the *press chevalier* of all our contemporaries, but we have a right to protest, in the most decided and emphatic terms, against a charge which, in our own case, at least, is perfectly gratuitous and undeserved. For years past we have paid a constant, and, we hope, not a wholly unprofitable attention to all questions connected with the administration and improvement of the law. We have consistently advocated temperate and progressive measures of law reform, not for the benefit of any particular class of practitioners, but for the benefit of the public at large; and, if it has been our privilege on many occasions to make the earliest announcements of contemplated changes in our legal institutions, we have never hesitated to canvass the means by which those changes were proposed to be effected, in a spirit of impartiality, entirely free from professional prejudices and party views.”

The Editor further remarks that—

“It has so happened that a sense of justice and of duty has led us, not merely now and then, but frequently, to advocate the special interests of those gentlemen who now somewhat obviously and ungenerously involve the whole press in one sweeping condemnation. We were amongst those who constantly sup-

<sup>1</sup> The *Legal Examiner* is spoken of, but as no such work now exists, and several passages are quoted from the *Legal Observer*, no doubt this journal is intended.

ported the repeal of the Certificate Duty, at a period, too, when success appeared hopeless. As the friends of an improved system of education for the Bar, we have always cited as the best authority in favour of such a measure, the excellent effects which have resulted from the compulsory system of education which the solicitors had the wisdom and public spirit to establish many years ago, and we may add, that we have never made our columns the vehicle for disseminating libels upon the whole of a respectable and important profession, merely on account of the unworthy conduct of which some of its members are occasionally guilty. Whilst a contemporary was devoting all its influence to sustain the monopoly of a small body of professional men at Doctors' Commons, we endeavoured to show that the administration of justice in testamentary cases would be rendered more uniform, inexpensive, and quite as secure as at present, if the general body of solicitors were permitted to participate in this description of business.

"On the other hand, on grounds equally public, we have not hesitated to condemn that system of *attorney-advocacy* which is permitted in some of our inferior Courts—a system which, while it is unfair to the junior Bar, is viewed with indifference by the general body of respectable attorneys, who seldom practise in those tribunals."

It appears to be admitted by our respected contemporary that the charge of unjustly aspersing the Profession is not unfounded with regard to some part of the Press. The eminent Solicitor who addressed the meeting at Leeds moved a resolution with regard only to "*a portion of the Press,*" which it was alleged had made systematic attacks on Attorneys and Solicitors, and proposed "that the public mind should be disabused *through the same channel.*"

It was expressly stated at the meeting that the objects in view could only be accomplished "through the medium of that powerful organ, the influence of which on the public opinion of this country was almost irresistible,—the Press. One of the main objects, therefore, ought to be, *through the Press,* to make generally known the claims of the Profession, and demonstrate the interest which the public had in supporting those claims; because it was a clearly demonstrable truth, that the interests of the Profession and those of the public were completely identical."

This, of course, did not mean through the *legal* Press, which reaches lawyers only, but through daily journals which, like the *Morning Post*, have often done justice in their leading columns to the Attorneys and Solicitors. The *Morning Post* could, scarcely, however, have been properly

singled out as an exception, for other journals have also occasionally stood forward in their behalf.<sup>2</sup> For our own part, also, we must beg to say that whenever the *Morning Post*, or any other paper or journal, daily, weekly, or otherwise, has contained any statements or remarks favourable to our brethren, which have come to our knowledge, we have gladly recorded them in our pages, in order that our readers might become acquainted therewith. The just and liberal notice of the claim to a repeal of the Annual Certificate Duty, which appeared in several of the newspapers, was quoted *in extenso*.

It should be remembered, also, that the Profession is not and cannot be responsible for all that is *said* at the meetings of its members, nor for all that is *written* in the law periodicals. The whole body cannot be bound by the language of individual speakers at professional meetings, nor by the sentiments expressed in the articles or correspondence found in the pages of legal journals. Our duty is mainly to watch and bring into notice whatever concerns the profession; and having many personal as well as other opportunities of ascertaining the sentiments of our brethren, we, for the most part, are able conscientiously to support them; but, on some occasions, we claim the right of differing in opinion on the course to be adopted, or the means to be used, for attaining the proposed end.

On the subject of "the Press," it is the opinion, we believe, of many of the leading Solicitors, that in bringing their claims before the public, and vindicating the character of the body at large, it would be better to leave those claims and that vindication in the hands of the independent and general Press, than attempt the establishment of a journal in the direct interest of the Profession. It may be observed, however,—as noticed at the Leeds meeting,—that if a fair and just representation of their case cannot be obtained in the present state of the daily Press, it is doubtless within the power of the Attorneys and Solicitors in England, with the aid of their brethren in Ireland and Scotland, to establish a paper of their own. As the legal advisers and "men of business" of all persons of property throughout the country, they might readily effect their just objects,—not by praising themselves (as some have absurdly

<sup>2</sup> The *Morning Herald* and *Daily News* have often lent their aid in diffusing a knowledge of professional subjects and interests.

supposed), but by demonstrating that the interests of the public and the well-being of the Profession are inseparably connected. It may reasonably be presumed, from the practical good sense and discretion of the attorneys in general, that such an undertaking would be conducted in a judicious and useful manner, alike advantageous to the public as to themselves, and without which it could not be successful.

It is, of course, freely acknowledged that the public writer must devote his first and best attention to the interests of the community at large, although in doing so he may neglect or injure some peculiar class, or bear hard on individual character. Like the forensic advocate, whose bounden duty it is to promote the cause of his client, at whatever loss or prejudice to others, so the journalist has to look only to the public welfare. We believe, however, that there is a disposition in many of the existing newspapers to come forward, on fit occasions, and lay before the public the grievances of which the Attorneys complain, and to remove the prejudices which prevail on many subjects connected with the welfare of the Profession. And we cannot but think, that if the public were made fully acquainted with the services daily rendered by the Attorneys in adjusting, staying, or preventing litigation, and the skilful and honourable means they adopt in the conduct and management of the affairs and promoting the interests of their clients, a different estimate would be formed of their usefulness and integrity.

We must admit that, in the course of the animadversions which are freely expressed in the press upon public men, there is, for the most part, perfect fair dealing, whether the individuals censured or commented upon are exalted or humble. It is not unfrequently that we read severe strictures on the judicial conduct and the sentences pronounced by the most eminent Judges of the land. As we observed on the occasion referred to, the editors of the daily Press by no means spare the members of the Bar. On the contrary, we think, many of them have been as harshly treated as the practitioners in the second branch of the Profession.

It is observed in the *Morning Post* that the Attorneys are "very properly sensitive" to public opinion. This is a remark made by one well acquainted with the importance of professional character. Indeed, the prosperity of every Solicitor must depend on the confidence justly reposed in his sound discretion and undoubted integrity. These

are the foundations of his professional success. He may add to these qualities more or less of tact, acuteness, legal learning, and skill, but the former are the true grounds on which his reputation must depend.

In the article to which the *Morning Post* takes exception, it is distinctly urged, that in order to remedy the matters complained of, "a constant systematic and zealous counteraction of the aspersions in the Press should be effected through the medium of the Press itself," and we expressed our belief, that "if the Attorneys would take the trouble to collect and state the facts and circumstances within their knowledge, there are many public journals which would do them the justice to bring their defence ably and impartially before the public." We must beg therefore to say, that we have not, along with our brethren at Leeds, been guilty of ingratitude—that greater sin than witchcraft. On the contrary, that we are ever alive to the advantage of any favourable view which may be taken by the public Press of the exertions, integrity, and intelligence of our branch of the Profession.

## FUSION OF LAW AND EQUITY.

### MR. ARCHER SHEE'S LECTURE AT THE INCORPORATED LAW SOCIETY.

SEVERAL of the Courses of Lectures delivered in the Hall of the Incorporated Law Society have been published by the respective Lecturers. Amongst these may be mentioned the late Mr. J. W. Smith and Mr. Adams. It is not permitted to any one to report the Lectures *in extenso*, and we think it is not desirable to do so. It is better that the student should hear them delivered, take his own notes, consult the authorities referred to, and compare notes with his brother students, rather than read them, perhaps listlessly, in his private chambers. Moreover, for the most part, the nature of the Lectures are unsuited to anything like a popular report of them.

There are, however, occasional exceptions to the general rule. Some of the *Introductory Lectures* it is very desirable should be brought into professional, if not public, notice; and we are glad, therefore, to be enabled to lay before our readers the substance of that part of Mr. Archer Shee's Lecture, on the 6th November, on the much-debated proposal of a "Fusion of Law and Equity." The learned Lecturer, in his usual eloquent, scientific, and animated style and manner, said:—

Leaving aside all questions of a historical and antiquarian character, connected with the origin of that administrative and judicial power, technically described by the text-writers, as the extraordinary jurisdiction of the *Great Seal*, let us observe the main points in which it differs from the action of strict or positive law. And first it may be said, that whereas the latter is chiefly conversant with the distinct or definite acts, and mutual transactions of men, considered in reference to the prescribed formalities by which their purport is evidenced, and in which, as it were, their legal essence consists; equity deals rather with the substance of the moral obligations that are supposed to be involved in these acts or transactions, but which cannot, in every case, be measured or appreciated by the application of the merely abstract rule framed for the purpose of creating or defining the right which is the subject of positive legislation. It is, in its most comprehensive signification, the *spirit*, in contradistinction to the bare letter of the law; so far as that law is dealing with questions which are amenable to the tribunal of conscience, and within the dominion of that principle which, in a broad and straightforward sense, we recognise as *fair play*.

Thus, while the law, as represented by prescriptive rules or maxims, of too remote a date to admit of our ascertaining their precise origin, or appealing to their first authoritative sanction,—which is what we generally understand by the Common Law,—or as defined and embodied in Acts of more recent and distinct legislation, as in the case of the whole body of the Statute Law,—contents itself with declaring rights and providing remedies applicable to any given state of things which may fall strictly within a generic class, ascertained and defined by reference to legal acts and formalities,—Equity takes notice of the various collateral or accompanying circumstances, affecting the moral position of the parties in relation to each other, which may often render the enforcement of a legal right an act of great social hardship, nay, even of absolute and flagrant injustice. Where this is the case, it interposes its authority to arrest, suspend, or totally nullify, as the case may be, the ordinary course of law, defeating the designs and machinations of those who would artfully wrest the power conferred by that law to purposes of fraud and iniquity, rescuing unguarded ignorance and simplicity from the legal and technical snares which crafty knowledge and experience often lay for their destruction, and restoring with nice discrimination and unerring skill the true balance of conscientious justice.

It is quite obvious that no system of legal administration could be adapted to the wants of human society in even a moderately advanced state of civilization where there did not exist in some quarter a power of modifying the technical rigour, and correcting or qualifying the practical and moral mistakes, so to speak, of enactive and restrictive law. Where this is not the case, the maxim '*summum jus summa*

*injuria*,' must be one of daily, almost of hourly illustration; for Law, as contradistinguished from Equity, is in its positive character, and whether in its declaratory or prohibitive aspect, a stern, unwavering, and uncompromising power, doubtless founded upon, and called into action by, principles of general morality and abstract justice, but once set in motion, pursuing its course with a blind disregard to individual consequences. When the Law declares that such and such an act, or such and such a formal transaction between A. and B., shall have such and such a result as regards the mutual interest and relative position of those parties, if this result be inevitable in every case where the prescribed formalities are found to answer the abstract definition of the act, and thereby ascertain the rights or duties of those who have participated in or are to be legally effected by it—it must necessarily follow that falsehood and trichery in every shape in which they can be brought to bear on the transactions of men, will be successfully resorted to by the least scrupulous against the honest, simple, and unsuspecting portion of the community. Improvident bargains, delusive agreements, unconscientious stipulations will be perpetually imposed on the thoughtless and the unwary by means of shameless misrepresentation or audacious fiction. The unsuspecting victim entrapped under false pretences, or in ignorance of his own rights, into the execution of a document, or the performance of a legal act, injuriously affecting those rights, would have no redress, and be compelled to submit in silence to the loss or detriment which his own want of caution and the knavery of others had combined to inflict upon him.

Some remedy or preventive must therefore be provided in every mature system of jurisprudence against evils of this nature; and the task of classifying and defining with requisite exactness the various species of fraud which may be resorted to, with a view of wresting the machinery of the law to the purposes of injustice, must always be among the chief difficulties attendant on the compilation of a code adapted to the legal exigencies of a civilized state, and framed upon the principle of justice being administered, with a due regard to technical rules and moral proprieties, by one and the same tribunal or class of tribunals. The theory of the Law in almost every European country but our own, admits and affects to carry out this principle; and the ordinary Courts, therefore, have to weigh the circumstances of every case, and frame their decision in reference to the conscientious as well as the merely technical or formal aspect of the system.

This administrative simplicity in matters of Law is considered by many publicists and philosophical inquirers or theorists as far preferable to the more complicated, and, as it appears at first sight, more cumbersome, machinery which in England and Ireland is employed in working out the ends of justice; where, from

time immemorial, the dispensing of positive and strictly technical Law has been confided to a set of tribunals quite distinct from those which are engaged in sifting and enforcing the conscientious claims of parties in litigation on points where the decision of the merely legal question would but imperfectly carry out, or perhaps wholly subvert, the principles of moral right and duty. It cannot be denied that there is a strong and a rapidly increasing party springing up among us, who are crying out for the amalgamation or consolidation of Law and Equity as a necessity of our more advanced and matured civilisation,—as an inevitable concession to the spirit of a more enlightened and philosophical age. These forensic *dilettanti* are profoundly impressed with the belief that in such a fusion of our national judicial functions lies the real remedy of all those evils which, with more or less of reason or plausibility, are by common consent laid to the charge of the respective jurisdictions of Law and Equity. Ingenious and sanguine enthusiasts, they fondly believe that the delay and expense of procedure, for which the Court of Chancery is universally, and sometimes perhaps not altogether unjustly, blamed, and which cause the very name of that august tribunal to be held in such salutary awe, are incident to and solely inherent in the peculiar structure and machinery of the Court itself, and that once transferred from the hands of Judges who have made its principles their exclusive study and occupation to the control of the ordinary legal tribunals, this important jurisdiction will be administered with a degree of cheapness and celerity that will recall the edifying judicial simplicity of the patriarchal ages.

To those, however, who can boast a more intimate acquaintance with the working of our whole legal system, and who have had opportunities of comparing its practical results with the corresponding products of forensic and judicial wisdom in foreign countries, and, indeed, in one nearer home, viz., Scotland, where this separation of the two jurisdictions does not prevail, the expediency of the proposed change will not appear so manifest as our theoretic philosophers would have us believe.

That our system of equitable jurisdiction has been, and perhaps still is, open to censure in matters connected with the details of procedure, as too much encumbered with forms and technicalities of practice, often occasioning unnecessary delay and consequent expense, we may fairly admit. But as the existence of these evils and their appropriate remedy are questions wholly extrinsic to that which is involved in the exclusive nature of the jurisdiction itself, so its incorporation with the strictly legal system of procedure can derive no authoritative or argumentative recommendation from their supposed prevalence or imputed enormity. On the other hand, it is impossible to deny that the peculiar position which the tribunals representing the authority of the Great Seal in matters of judicial cognisance has from time immemorial assumed in reference to the course

of merely technical law, has had a most beneficial effect on the true interests of justice, by clearly defining, distinguishing, and developing that more exalted portion of its functions, in which its very essence and spirit mainly consist. Having originally claimed and fearlessly exercised the right of disregarding the shackles and trammels of positive law, wherever the genuine and immutable principles of truth and fair dealing were at stake, the Court of Chancery has ever bestowed on the examination and assertion of these principles that earnest and undivided attention—that exclusive and concentrated devotion, without which, moral science and philosophic truth can never be successfully investigated, and which, in their votaries, they never fail to reward. The Lecturer here observed, that he was not invoking that religious veneration for the wisdom of our ancestors, so often appealed to in defence of time-honoured absurdities and obsolete errors in political or social affairs, he was dealing with practical results in no manner ascribable to the far-sighted theories of legislative philosophy, but springing from the combined operation of many distinct causes, in which political accident, ecclesiastical policy, and national predilections, have perhaps each had a share. The question is not whether it be theoretically right, or preferable in the abstract, that Law and Equity should be administered as two separate jurisdictions, but whether, such a separation having existed from a period of our history so remote, that in our most ancient judicial records we shall in vain seek for any traces of a different order of things, we are called upon, for the sake of mere theory, and without any certain prospect of benefit or improvement, to adopt a new system, and encounter all the practical inconveniences involved in the completion of so great a change. Before this great administrative revolution can be reasonably forced upon us by the *doctrinaires* of our day, the *onus probandi* lies upon them, to show that the existing system has been detrimental to the interests of justice, or at least that the system which they seek to substitute has worked better for those interests amongst our neighbours in France, in Scotland, or elsewhere. Now, upon this point, he asserted without fear of contradiction, or at least without fear of refutation, that no such case could be made out against the Court of Chancery. We might confidently challenge the judicial system, of the whole civilised world to produce an administration of justice on *equitable* principles which can be considered as more effective or effectual than our own. It was the lecturer's firm conviction, that the distinct character of the jurisdiction has had a most beneficial effect in elucidating the study of Equity as an important branch of ethical science, and freeing the judicial mind engaged in its administration, from a host of conventional and technical impediments to the course of substantial justice, that must inevitably beset and bewilder the action of that tribunal which, bound *primâ facie*, by the terms of positive law, and calmly engaged in

the enforcement of what it prescribes, has ever and anon to check or qualify its results, by reference to principles of less easy ascertainment and more doubtful application. For be it remembered, that consolidate them or amalgamate them as you will, or as you can, in practice, Law, that is, *merely positive law* and Equity are in their very essence philosophically distinguishable; and, however, in a well-organised system of judicial policy, the latter may be taken or studied as the ground-work or guide of the former, we can never blend the two abstractions into one idea, or reduce their respective intrinsic principles to one and the same simple theory.

Equity, by whomsoever administered, must ever be in a vast majority of cases exceptional to, and either cumulative or restrictive of, some *positive* general law. In all early and fundamental legislation, laws are necessarily framed with reference to simple combinations of fact or circumstance—fashioned to meet and include broad and extensive classes of action and subject. Their terms imply a sweeping and unvarying range of operation as applicable to rights, duties or wrongs of obvious apprehension and easy definition. But, however just or reasonable these laws may be in themselves, when applied to the precise state of circumstances which they contemplate, taken in the ordinary aspect or signification of those circumstances—once bring them into active operation, and innumerable cases will from time to time arise where the enforcement of the letter of the Law would inflict a grievous moral wrong, and thereby totally defeat the general object for which laws are framed. In such cases, the administrative judicial authority, if animated by the true spirit of justice, will struggle hard against the unbending rigour of the written Law, and seek to qualify its inconvenient and peremptory precision by a certain latitude of interpretation or laxity of application. If the tribunal itself have power and wisdom combined sufficient, as occasion may require, to divert the course of positive law into a purely equitable channel, the authority of the Judge supplies the deficiencies of the legislator, and the exceptional decree, recorded as a precedent, may establish an *exceptional rule*, which in process of time acquires in all instances, where the controlling moral circumstances of the case are identical or similar, a degree of stringency as absolute as could be supplied by legislative enactment.

Still, the progress of this judicial development, in all systems where the general rule as originally laid down is distinct, clear, and imperative, must be tardy, timid, and uncertain. The assumption of a *dispensing power*,—and in its inception, it is no less,—against the sovereign authority, embodied in the shape of positive law, must ever be felt as a bold measure on the part of those who have been selected by that sovereign authority itself to administer the Law as they find it written; and the natural reluctance to deviate from the course prescribed by that authority, cannot but act as a

very powerful check on those equitable tendencies that would in many cases suggest a conscientious modification of merely legal principle.

The course here glanced at must have been, to some extent at least, that which the judicial system has followed in its development in those countries where the principles of Law and Equity are within the competency of the same judicial functions, and where indeed the judicial theory itself recognises no boundary and affects to admit no distinction between them.

The labours of the civilians and canonists, including the most successful efforts of those who in former ages or in more recent times have cultivated and developed the science of jurisprudence with a distinct view to legislation, must be ultimately referred to this origin; as the attempt to define and classify the various cases in which a general positive rule is to be disregarded or modified, necessarily presupposes the earlier existence of the rule itself in its unqualified rigour. The necessity or expediency of codification on a scale sufficiently extensive to include the whole range of what may be termed exceptional justice, must have been suggested by some experience of the imperfect success with which merely judicial or administrative attempts to maintain the balance of conscientious right against express enactment are usually attended. In most of those continental countries, the progress of whose civilisation has in some degree kept pace with our own, or who at least date from about the same period as ourselves their emergence from that state of barbarism which the irruption of the northern hordes had spread over the face of Europe, the administrative judicial power appears to have early had the courage and address to adopt a greater or lesser portion of the system of the civilians in modification of the simple and fundamental laws of their earlier and ruder polity; and thus, in the course of time, the equitable principle which the civil law may be said to represent, became partially incorporated in their general scheme of legal procedure. In the case of France, indeed, and the other countries where the *Code Napoléon* has been on points of abstract and universal justice adopted into the national system, the equitable principles of the civilians have to a certain degree assumed the shape and consistence of positive law.

In England, the ordinary tribunals of the country, though enjoying the same opportunities of controlling, by judicial interpretation or extension, the blind and unbending rigour of our fundamental and positive laws, persisted in adhering throughout to their letter, and refused to admit the consideration of those more discriminating principles of administrative justice developed in the general Civil and Ecclesiastical Law of Europe, in the framing or modifying of their decrees.

But that occasional modification of legal strictness—indispensable for attaining the true ends of justice—though pertinaciously withheld and refused by the judicial expositors of

the law, was ere long amply supplied, in a distinct and separate shape, by the direct agency and controlling power of the Royal Prerogative.

In the theory of our constitution, the Crown is the fountain of justice as well as of honour; and to those who, from time to time, were entrusted with the custody of the Great Seal—as the official and effective symbol of the kingly power—was also confided the care of redressing or averting, on principles of conscientious justice, the wrongs inflicted or threatened in the name of strict law.

The individuals to whom this important authority was thus delegated, were in early days invariably ecclesiastics, selected, no doubt, from among the most learned and enlightened of their order, for the high office of Chancellor or Keeper of the Great Seal. They were men to whom, from the nature and course of their canonical studies, the first principles of moral and philosophical jurisprudence were generally familiar. 'The king's name,' says the Psalmist, 'is a tower of strength,' and so indeed it proved to these ecclesiastical Chancellors in the administration of judicial functions, which, if estimated by the constitutional standard of the present day, might almost be said to be usurped over the ordinary tribunals of the land. Strong in the confidence of the Crown, and the uncontrolled and unquestioned exercise of a prerogative as august as it was formidable, they were not restrained by the cobwebs of form or the trammels of legal technicality from deciding *secundum equum et iustum* on the matters brought under their cognizance. Dispensers of justice, indeed, in its highest attributes, but redressers or controllers of law, they had none of those grounds for caution or timidity in their judgments, which rendered the deviation from mere legal principles so difficult to the administrators of ordinary law. Following and adhering to the law, only so far as its rules and maxims did not conflict with substantial justice in the individual case before them, they unhesitatingly set aside 'the letter which killeth,' in favour of the 'spirit' which 'giveth life,' and called upon to administer a jurisdiction paramount to the cause and effect of positive law, they applied themselves to work out the principles of that higher jurisdiction with a freedom which the consciousness of superior enlightenment, and the virtual possession of irresponsible power, could alone impart and sustain.

With us, therefore, from the first, Equity, in its more extended sense, and in reference to its more general attributes, has been practically, as well as theoretically, a distinct and separate science; and in this case, as in most cases where concentration of mind has been brought to bear on a particular branch of knowledge or philosophy, to the exclusion of other and analogous subjects, except so far as they have an immediate and operative reference to the main object of study, the theory has in process of time been better understood and more clearly defined in its nature and application, than it would probably have been under a system in

which the science itself had commanded from those who were intrusted with its practical results, a more divided or less exclusive attention.

To borrow the language of chemistry, we may say, that through the effective analytical process to which the experimental matter has been subjected in the laboratory of the Great Seal, the sediment of mere law has been precipitated, and the pure spirit of conscientious justice has been evolved in its brightest and clearest form and aspect.

This is what the most inveterate assailants of the Court of Chancery will hardly venture to deny; at least such among them as have any real acquaintance with the structure, principles, and practical results of the jurisdiction.

In saying this, the Lecturer was referring to the principle involved in the decision of the Court upon any given point submitted to its judgment, where the interests of moral right, truth, and justice are at stake. It was not of the mere technical forms preliminary or incidental to the act of bringing the matter before the Judge for his decision, but of the judicial and moral grounds of that decision, that he spoke. The expense and delay of litigation, the length of verbose pleadings, and the cumbrous nature of the procedure, are evils which, *as far as they exist*,—and we must not forget that they have been much diminished by legislative and administrative regulations within the last few years,—are wholly extrinsic to the principle and moral action of the jurisdiction itself. The costs of a Chancery suit may be unnecessarily or oppressively heavy, while the decree defining the rights of the parties in litigation may be the embodiment of the highest moral and judicial wisdom; and our indignation at the amount of the one, ought not to prevent us from doing full justice to the merits of the other. If the ascent to the temple be tortuous, and the path rugged and uneven,—if the approach should even be encumbered with stumbling-blocks and obstacles of the most vexatious or repulsive character, it may indeed afford an excellent reason for shortening the road, smoothing down the asperities, and removing every unnecessary obstruction from the pathway; but it cannot supply an argument against our faith in the oracle, or injuriously affect the wisdom and prophetic truth of its responses. While, therefore, the motives of our reliance—the *grounds of our faith*—remain unshaken, why should we listen eagerly or willingly to the proposal of transferring our devotional homage elsewhere? In our system, as at present constituted, we have every guarantee for substantial justice on the part of the existing tribunals which a long experience of their theoretic knowledge and judicial wisdom can secure; and, if we are prudent, while we do our best to remove or lessen the grievances of procedure which may be fairly charged on our system of Equity, we shall exhibit an anxious care to preserve and sustain the system itself in its distinct and effective integrity.



In these observations, suggested by the ventilation of certain schemes or projects now afloat for the consolidation of Law and Equity, the lecturer observed that he was dealing with the jurisdiction employed in dispensing justice on the footing of the latter science, in its broadest and most theoretic character. But Equity, taken in its general sense as the jurisdiction administered under the authority of the Great Seal, had functions of a more technical kind, which, although traceable to the main principle on which the whole of that jurisdiction is founded, were in their administration subject to rules as arbitrary and as nearly uniform in their operation as the action of the Common Law itself.

### NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

#### CHURCH BUILDING ACTS' AMENDMENT.

17 & 18 VICT. C. 32.

Rents and fines may be apportioned ; s. 1.

1. Parties to the apportionment ; s. 2.
- Jury may apportion ; s. 3.
- Apportioned rent to be recoverable by the same remedies as the entire rent ; s. 4.

How sums secured by way of insurance, &c., may be apportioned ; s. 5.

Act to extend to cases where part of hereditaments are included in leases, &c. ; s. 6.

Act to extend to contracts for leases ; s. 7.

Acts herein referred to ; s. 8.

The following are the title and sections of the Act :—

An Act to facilitate the Apportionment of the Rent when Parts of Lands in Lease are taken for the Purposes of the Church Building Acts. [10th July, 1854.]

1. If any hereditaments to be acquired for any of the purposes of any of the Church Building Acts are included in a lease or underlease with any other hereditaments, the rent reserved by such lease or underlease, and any fine certain to be paid on any renewals thereof, may be apportioned between the hereditaments so to be required and the remainder of the hereditaments, or may be wholly charged on such remainder, in exoneration of the hereditaments so to be acquired.

2. Such apportionment or exoneration may be effected by the parties respectively having power to assign or convey the leasehold interest, and to assign or convey the reversion expectant on such leasehold interest, in the hereditaments so to be acquired.

3. In cases where the value of the hereditaments to be acquired is to be ascertained by a

jury, the jury may also apportion any such rent or fine as aforesaid.

4. On the acquiring as aforesaid of any hereditaments included with other hereditaments in a lease or underlease or leases or underleases as aforesaid, the rent or apportioned rent by any such apportionment or exoneration expressed to be made payable out of the hereditaments which shall not be acquired as aforesaid, and out of the hereditaments which shall be so acquired respectively, shall be recoverable as regards such hereditaments respectively by the same remedies by which before such acquiring the rent reserved by the lease or underlease was recoverable out of the whole of the hereditaments therein comprised ; and all the covenants, conditions, and agreements in such lease or underlease contained, as well those relating to rents as others, so far as regards the part acquired and the residue not acquired as aforesaid respectively of the hereditaments comprised in such lease or underlease, shall continue and shall subsist upon and against and with regard to such part so acquired and such residue respectively in like manner as if such part or residue only had been originally comprised in such lease or underlease ; and in case such lease or underlease shall contain provisions for renewal upon payment of a fine certain, such provisions for renewal shall apply to the part acquired and the residue not acquired as aforesaid respectively of the hereditaments comprised in such lease or underlease in the same manner as if such part or residue only had been originally comprised in such lease or underlease, and the fine certain to be paid on any renewal had been the fine certain which in the exoneration or apportionment shall be expressed to be payable in respect of the same hereditaments.

5. Sums of money to be secured by way of insurance and all other sums of money or other payments or services may be apportioned or exclusively charged in the same manner, and with the same effect in all respects, as are herein provided with respect to the apportionment or exclusive charge of rent.

6. The provisions of this Act extend to all cases where a part of the hereditaments included in any lease or underlease is to be acquired for the purpose of any of the Church Building Acts, although no apportionment of or exoneration from rent may take place by reason that no rent or a rent only nominal is reserved by the lease.

7. The provisions of this Act relate to contracts for leases and underleases as well as to leases and underleases.

8. The Acts herein referred to as the Church Building Acts are the Act of the 14 & 15 Vict. c. 97, "To amend the Church Building Acts," and the Acts in that Act enumerated as the Church Building Acts, and also the Act of the 6 & 7 Vict. c. 37, "To make better Provision for the Spiritual care of populous Parishes.

**GAMING HOUSES' SUPPRESSION.**

**17 & 18 VICT. c. 38.<sup>1</sup>**

By the 8 & 9 Vict. c. 109, powers are given to justices of the peace in places beyond the metropolitan police district to authorise constables, and to the commissioners of police within such district to authorise superintendents belonging to the metropolitan police force, to enter houses suspected to be kept as common gaming houses, and to arrest all persons found therein; and where any cards, dice, balls, counters, tables, or other instruments of gaming used in playing any unlawful game shall be found it shall be evidence, until the contrary be made to appear, that the house is used as a common gaming house, and that the persons found in the room or place were playing therein: but the keepers of common gaming houses contrive, by fortifying the entrances to keep out the officers until the instruments of gaming have been removed, so that no sufficient evidence can be obtained to convict the offenders: it is therefore enacted,

1. Any person who shall wilfully prevent any constable or officer authorised under the provisions of the 8 & 9 Vict. c. 109, to enter any house, room, or place, from entering, or who shall obstruct or delay any such constable or officer in so entering, and any person who, by any bolt or contrivance, shall secure any door of or any means of access to any house, room, &c., may for every such offence, on a summary conviction before two justices of the peace, be adjudged to pay any penalty not exceeding 100*l.*, with costs attending the conviction as to the justices shall appear reasonable; and on non-payment, may be committed to gaol with or without hard labour, for six months.

2. Where any constable or officer is wilfully prevented from or obstructed or delayed in entering, or where any external or internal door shall be found to be provided with any bolt, chain, or any contrivance for the purpose of preventing the entry of any constable, or for giving an alarm in case of such entry, or if any such house, &c., is found provided with any means for unlawful gaming, or with any means for concealing instruments of gaming, it shall be evidence, until the contrary be made to appear, that such house, &c., is used as a common gaming house and that the persons found therein were unlawfully playing.

3. If any person found in any house, &c., entered by any constable or officer, upon being arrested by any such constable or officer, or upon being brought before any justices, shall refuse to give the same, or shall give any false name or address, he may, upon summary conviction, be adjudged to pay any penalty not exceeding 50*l.*, with such costs as to such justices shall appear reasonable, and on non-payment be imprisoned one month.

4. Any person, being the owner or occupier, or having the use of any house, &c., who shall open, keep, or use the same for the purposes of unlawful gaming, and any person who shall knowingly permit the same to be used by any other person for the purposes aforesaid, and any person having the care or management of any house, &c., used for the purposes aforesaid, and any person who shall furnish money for the purpose of gaming with persons frequenting such house, &c., may, on summary conviction before any two justices of the peace, be adjudged to forfeit 500*l.*, and adjudged to pay costs, and on non-payment may be committed to gaol with or without hard labour, for 12 calendar months.

5. It shall be lawful for the justices before whom any persons shall be brought who have been found in any house, &c., to require such persons to be examined on oath and give evidence touching any unlawful gaming in such house, room, &c., or touching any act done for the purpose of preventing the entry of any constable; and no person so required to be examined shall be excused from being examined, on the ground that his evidence will tend to criminate himself; and any person so required to be examined, who refuses to make oath or answer any such question as aforesaid, shall be subject to be dealt with as any person appearing as a witness before any justices or Court in obedience to a summons or subpoena, and refusing, without lawful cause or excuse, to be sworn or to give evidence, may by law be dealt with.

6. Every person so required to be examined as a witness, who upon such examination shall make true and faithful discovery to the best of his knowledge of all things as to which he is so examined, shall receive from the justices or Judge of the Court by whom he is examined a certificate in writing to that effect, and shall be freed from all criminal prosecutions and penal actions; and such witness shall not be indemnified under this Act unless he receive from such justices or Judge a certificate in writing under their hands, stating that such witness has on his examination made a true disclosure touching all things as to which he has been examined.

7. If any person convicted under this Act on information before justices shall be adjudged to pay any penalty or any costs and charges attending the conviction, and shall fail to pay such penalty or costs, the same may be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of one of the convicting justices.

8. One-half of any pecuniary penalty which shall be adjudged to be paid under this Act shall be paid to the person laying the information upon which the conviction takes place, and the remaining half shall be applied in aid of the poor-rate of the parish in which the offence shall have been committed, and shall be paid for that purpose to the overseer or other person authorised to receive poor-rates in such parish, or if the place wherein the offence shall

<sup>1</sup> In the prosecutions under this Act (of which we give the substance) the informer is entitled to half the penalty (s. 8).

have been committed shall be extra-parochial, then the justices by whom such penalty shall be adjudged to be paid shall direct such remaining half thereof to be applied in aid of the poor-rate of such extra-parochial place, or if there shall not be any poor-rate therein, in aid of the poor-rate of any adjoining poor-rate or district.

9. In case any person who shall have laid any information in respect of any offence against this Act shall not appear at the time at which the defendant shall have been summoned to appear, or, if such person shall otherwise have neglected to proceed upon or prosecute such information with due diligence, it shall be lawful for such justices to authorise any other person to proceed on such information and summons.

10. Any person who shall be summarily convicted under this Act may appeal to the next general or *quarter session* of the peace, provided that such person, at the time of such conviction, or within *forty-eight hours* thereafter, enter into a recognizance, with two sufficient securities, conditioned personally to appear at the said Session to try such appeal, and to abide the further judgment of the Court at such Session, and to pay such costs as shall be by the last-mentioned Court awarded; and in case any such appeal shall be dismissed, and the order or conviction affirmed, the reasonable expenses of all such witnesses attending as aforesaid, to be ascertained by the Court, shall be repaid to the said treasurer by the appellant.

11. On any such appeal, no objection shall be allowed to the information whereon the conviction has taken place, or to such conviction, on any *matter of form* or on any insufficiency of statement, provided it shall appear to the Justices in Quarter Sessions that the defendant has been sufficiently informed of the charge intended to be made against him, and that such conviction was proper on the merits of the case; and no information, conviction, or judgment of the justices in general or quarter sessions shall be removed by certiorari into the Court of Queen's Bench.

12. When any distress shall be made for any money to be levied by virtue of the warrant of any justice under this Act, the distress shall not be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or *want of form* in the information, summons, warrant of apprehension, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser from the beginning, on account of any irregularity which shall be afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage by an action on the case in any of her Majesty's Courts of Record.

13. No plaintiff shall recover in any action for any irregularity, trespass, or other wrongful proceeding, if tender of sufficient amends shall have been made by or on behalf of the

party who shall have committed such irregularity, &c., before such action brought; and in case no tender shall have been made it shall be lawful for the defendant in any such action to pay into Court such sum of money as he shall think fit, whereupon such proceeding, order, and adjudication shall be had and made in and by such Court as in other actions where defendants are allowed to pay money into Court.

14. No action, suit, or information, or any other proceeding, shall be brought against any person for anything done or omitted to be done in pursuance of this Act, unless notice in writing shall be given by the party intending to prosecute such suit, information, &c., *one month* at least before prosecuting the same, nor unless such action, suit, &c., shall be brought or commenced within *three months* next after the act or omission complained of.

15. This Act shall commence and come into operation on the 1st August, 1854.

## LAW OF COSTS.

### TAXATION OF COSTS.—WHERE ONE OBJECT OF SUIT FAILS.—SET-OFF.

A *SUIT* was instituted by the plaintiffs, claiming the whole of a sum received by the executors of a testator, after a suit for the administration of his estate had been wound up, but at the hearing, they admitted that one-half only belonged to the estate. By the decree, it was ordered that the plaintiffs should pay to the defendants so much of their costs of the suit as had been occasioned by the plaintiffs' setting up a claim to the whole of the debt. The Master had taxed the costs on the following principle:—he considered the suit instituted for two objects, and that one had succeeded and the other failed. He then examined the pleadings, briefs, and other papers in the suit, and found that 19 folios thereof related exclusively to the claim of the whole debt, and that the rest related generally to both the objects of the suit. He then taxed the whole amount of the plaintiffs' costs of the suit (except as to the 19 folios), at 419*l.*, from which he then deducted 126*l.* (being one moiety of the plaintiffs' costs up to the hearing of the cause), and 112*l.* (being one moiety of the defendants' costs of the suit up to the decree, leaving a balance of 180*l.* to be allowed to the plaintiffs as their costs of suit.

On the petition by the plaintiffs for liberty to except, the *Master of the Rolls* said—

"I cannot distinguish this case from *Heighington v. Grant*, 1 Beav. 228. The Master having ascertained how much of the costs had been occasioned by the suit, exclusive of the

matter dismissed with costs, concluded that the rest of the bill was common to both objects, and apportioned it in two, the two being necessarily equal, and he gave the plaintiffs one-half. The case of the *Attorney-General v. Lord Carrington*, 6 Beav. 454, is more in the petitioners' favour. There the Master of the Rolls directed that so much of the information as related to one of two objects should be dismissed with costs, and that the Attorney-General should have his costs of the other part. The Master made his report, and applied the same principle as that in *Heighington v. Grant*, and gave the Attorney-General only one-half of the general costs common to both objects. Lord Langdale thought that the Master had miscarried; for though such is the rule, where a plaintiff's bill is dismissed with costs, as to one object, and he has a decree with costs as to the other, yet he considered that case as an exception. At the end of his judgment he says,—'It is supposed that this is no exception to the general rule. The information was dismissed without, and not with costs as to part, and a decree was made with the costs of the suit.' It is clear that Lord Langdale affirmed the general rule, and that he thought there was a distinction when no costs were given of that part which failed, and he considered that the decree in that case was an exception. In this case it is not so, for part of the suit was dismissed with costs; and the plaintiffs get the rest of the costs.

In the *Attorney-General v. Lord Carrington*, Lord Langdale stated that he was a little surprised at the certificate in *Heighington v. Grant*, when he acted on it, but he affirmed the principle in *Attorney-General v. Lord Carrington*.

"It is obvious that in many cases, where a suit is for two objects, the part which relates exclusively to the one which fails may be very small; for the general statements may be common to both objects, and would be necessary for the case on which the plaintiff succeeds, but, on the other hand, it is nevertheless possible, that if the plaintiff had confined his demand to that alone to which he was entitled, the defendant would not have resisted it. The Court is much disposed to accede to the view of Taxing Masters, and to adopt the rules of their office; and in this case I should be destroying the rule if I were to accede to the prayer of this petition. It must therefore be dismissed with costs." *Hardy v. Bull*, 17 Beav. 355.

## QUESTIONS AT THE EXAMINATION.

*Michaelmas Term, 1854.*

### I. PRELIMINARY.

WHERE, and with whom, did you serve your clerkship?

State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

Mention some of the principal law books which you have read and studied.

Have you attended any, and what, law lectures?

### II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

State the leading Acts of Parliament which have been passed during the last five years affecting the Common Law.

Set forth the ordinary proceedings in an action at law from its commencement to its termination.

State some of the most prominent rules by which contracts not under seal are to be construed.

Will a moral obligation be sufficient to support an express promise where no legal liability has ever existed?

You are consulted as to the liability of a party upon a guarantee. In advising upon this to what particular points would your attention be directed?

State the general rules regulating the liability of partners for the acts of each other.

What is required to take a debt out of the Statute of Limitations?

When it is intended to give special matter in evidence by virtue of an Act of Parliament under the plea of general issue, what is required to be done?

What is now required to render a bill of sale valid as against an execution creditor?

A. B., in the presence of a witness, makes a representation concerning the character of a third party, upon which credit is given to the latter; such representation proving false, can an action be successfully maintained against A. B.?

In ejectment against a tenant in possession, what is required to enable a landlord to come in and defend?

In an action against two or more joint contractors to recover a debt which is barred by the Statute, evidence can be given of an acknowledgment by one of them; will this revive the debt against the other joint contractors?

Is there any mode by which a judgment creditor can attach any debts due to the judgment debtor, and how?

In what cases may an application be made to compel a plaintiff to give security for costs, and when should it be made?

Is there any limit as to the time for bringing error upon a judgment, and what is it?

### III. CONVEYANCING.

Is a married woman empowered during coverture to dispose of her real estate,—where

ther in possession or reversion, and by what means?

Give the same information as regards her personal estate in possession and reversion.

What are the rights of a husband over his wife's real and personal property, as well in possession as in reversion?

What are the principal rules which regulate the apportionment of rents as between the tenant for life and remainder-man?

What are emblements, and in what cases, and by whom can they be claimed?

What are the relative rights of a tenant for life without impeachment of waste and a tenant for life impeachable of waste? In what particulars do the two estates differ?

Can the lord of a copyhold manor be compelled to enfranchise? If so, in what cases, and by whom? And how are the expenses of enfranchisement to be borne.

In a mortgage of leasehold houses, is an assignment or an under lease the preferable security? And what are the grounds of preference?

Set forth for the distinctive characteristics of freehold, copyhold, and leasehold estates.

What formalities are necessary to the due execution of a will, and what is the effect of a person interested under the will being one of the attesting witnesses?

Within what time must a disentailing deed be enrolled? And what is the operation of such a deed executed by tenant in tail of freehold estates, where it has not been enrolled within the specified time?

Out of what estate of her husband is a wife (married before and one married after the 1st January, 1834, respectively), dowable, and in what does her dower consist at Common Law, and according to the custom of gavelkind?

A. purchased a freehold estate, — B. and C., his wife's trustees, lending part of the money. It is desired to embrace in one deed the mortgage and conveyance. State shortly how the estate should be limited?

A vendor wishes to sell by auction a small portion of his estate and desires to retain the title-deeds which relate to the larger portion. Draw a proper condition of sale applicable to such a state of things?

A. dies in 1850 intestate, seised in fee of a freehold estate mortgaged in 1848 for a term of years to C. B., the heir of A. sells in 1854, for the purpose of paying off the mortgage. Against whom, and for what period, ought the purchaser to search for judgments?

#### IV. EQUITY AND PRACTICE OF THE COURTS.

What are the general heads of the subjects of the equity jurisdiction of the Court of Chancery?

Name the several Courts having equitable jurisdiction, distinguishing those in which that jurisdiction is limited, and to what extent.

Are other Courts subject to restraint from the Court of Chancery; if so, under what circumstances?

Has the Lord Chancellor power to deliver judgment in any case after he has retired from office?

In the event of the parties not proceeding with a suit, has the Master any power to cause the suit to be continued, and by whom?

State generally the matters which, by the 15 & 16 Vict. c. 80, the Master of the Rolls and Vice-Chancellors are empowered to dispose of at Chambers.

What are the requisites to a contract, the specific performance of which Equity will enforce.

What are letters missive? What do they require? And how are they obtained?

Define trusts executed and trusts executory, and state if there is any, and what, difference in their construction.

If a trustee refuse or neglect to convey real estate, what course should be adopted to compel or render unnecessary his concurrence?

A testatrix bequeaths a charitable legacy of 900*l.*, and charges it on all her property, which consists of 6,000*l.* realty, 4,000*l.* mixed, and 2,00*l.* pure personalty, — what amount will the charity be entitled to receive, and on what principle?

In answering a bill, can a defendant introduce into his answer any other matter than that inquired of by the interrogatories?

What alteration has been made in the practice of the Court of Chancery by the Statute 15 & 16 Vict. c. 88, with reference to the determination of the legal right, or title, of a party seeking relief in Equity?

Who are the parties who can obtain an order before a Judge at Chambers for the administration of a deceased person's personal estate? and state the course of proceeding to obtain such an order.

Has a Judge at Chambers power to make an order for the administration of a deceased person's real estate? if yea, at whose instance and to what extent, if any, is that power limited?

#### V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

What is the title and date of the Act of Parliament which now regulates the law and proceedings at bankruptcy?

What persons are considered to be scriveners within the meaning of the Act, and what persons as traders are expressly excepted from its operation?

What is the necessary amount of the debt or debts owing to a petitioning creditor, or creditors, to enable him or them to procure an adjudication in bankruptcy against a debtor?

State the different acts of a trader which constitute acts of bankruptcy.

Describe generally, the course of proceeding to obtain an adjudication in bankruptcy.

Has a bankrupt any, and what, time given to dispute his alleged bankruptcy?

Is the execution by a trader of a deed conveying or assigning all his estate and effects to trustees for the benefit of all his creditors, in

any, and (if any) what case, not to be deemed an act of bankruptcy, and state what is requisite to be done in order to give effect to such a deed?

When is a settlement by a trader before bankruptcy valid, and when void, against his creditors?

What is meant by a fraudulent preference to a creditor?

How are debts proved against the estate of a bankrupt?

How can the assignees of a bankrupt disencumber themselves of leasehold property of no available value?

In actions brought by the assignees, must they in any, and what, cases adduce evidence of the bankruptcy?

By whom is the certificate of a bankrupt in the first instance granted, and in case of its refusal is there any, and what, appeal?

Under what circumstances can a trader successfully petition for an adjudication in bankruptcy against himself?

What acts of a bankrupt will of themselves disentitle him to obtain his certificate?

#### VI. CRIMINAL LAW AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

What is burglary, and within which of the 24 hours must it be committed in order to constitute the offence?

May the attempt of the burglar be resisted unto death?

Under what circumstances can the wife's evidence be received for her husband?

Can the first wife of a man be admitted as a witness against him for bigamy?

When a person is convicted of felony and receives judgment, does all his property, real as well as personal, become thereby forfeited?

And is there any, and what, difference, between real and personal property as to the time of forfeiture?

Are attorneys, bankers, brokers, factors, agents, or trustees, or any, and which of them, liable to be prosecuted criminally for misapplying any goods, money, bills, or property intrusted them? If they are, what evidence is necessary to support an indictment for such misapplication?

If an attorney, after receiving money from his client to be applied to a specific purpose, apply the same to his own purpose, is it a criminal offence, and if so, how punishable?

An agent renders a false account to his principal, concealing from him the knowledge of part of the money or effects received on his account; is the agent liable to be prosecuted criminally, or only to an action?

Can the owner or occupier of land expel by force any person found trespassing upon it?

If a man be convicted of perjury, what effect will it have upon him as a juryman or a witness?

Is it lawful to set a man-trap, spring gun, or other instrument, calculated to destroy human life, or to inflict bodily harm, in any, and what place or places, during any, and what part of, the 24 hours?

Can a person trespassing and doing damage, be taken before a magistrate without a warrant?

What are the different modes by which a parochial settlement may now be gained?

How, and before whom, is the disputed settlement of a pauper to be tried and decided, and what are the preliminary steps necessary to bring it to a trial?

### POINTS IN COMMON LAW PRACTICE.

#### RENEWED NOTICE TO PRODUCE AT SECOND TRIAL UNNECESSARY.

NOTICE to produce a document was given on the trial of an action, of which a new trial was afterwards ordered. The plaintiff, without renewing the notice, called for the production of the document, and on its not being forthcoming, gave secondary evidence of its contents.

*Patteson, J.*, said,—“There does not appear to be any express authority on the subject; but the Master tells us that it has been the practice to disallow the costs of fresh notices to produce at second trials, on the ground that they were unnecessary, the first notices being available. And we think this the more convenient rule. Had the form of a notice to produce not been in general terms, to produce on the trial, but to produce on the trial at a particular assizes, there would be more ground for doubt, though even then I think the objection would not prevail. In *Elton v. Larkins*, 5 Car. & P. 386, *Tisdal, C. J.*, says,—‘The former trial is deemed as no trial, and the new trial, being of the same cause, is therefore subject to the same admissions.’ The reason is as applicable to a notice to produce as to an admission. It is possible that there may sometimes be unnecessary trouble occasioned to the party who brings documents ready to be produced, when they are not wanted; but that inconvenience is less important than the expense of serving fresh notices.” *Hope v. Beadon*, 17 Q. B. 509.

### HOW TO GET ON AT THE BAR.

CENSURE is a tax that men have to pay for being eminent, and as the Bar is a Profession which leads to the highest honours and emoluments, we need not wonder that its members are visited with satirical jests and animadversions, particularly those who are unsuccessful.

cessful. "Briefless Barristers" are ever considered fair marks for the malice and ridicule of periodical writers.

In a recent Number (vol. 48, p. 367), we extracted from *Fraser's Magazine* for September some passages in favour of the cultivation of the good opinion of attorneys, as a means of "getting on at the Bar." The alleged influence was over-stated, but doubtless there was a certain amount of truth in the representation given by the facetious writer.

The progress of an aspiring barrister may, however, be promoted by various other means than the friendship of attorneys. He may have patrons amongst leading members of the Bar. He may have a wealthy merchant, or manufacturer, a banker or bill broker, for a relation, whose solicitors may be instructed to retain him. He may have parliamentary connexions and hold briefs before Committees of both Houses. He may be favoured by parochial, or borough, or civic authorities. He may write books, or report cases, and thus bring his name before the Profession. He may help his brethren at the Bar who are not so industrious as himself: thus acquiring knowledge, exercising his talents, and making friends. All these are legitimate means of professional advancement.

The critic we have referred to gives various rules for "getting on at the Bar." Most of them are ludicrous exaggerations, but others, to a laborious man, are not without their practical value. Thus he recommends *constant attendance in Court*:—

"A common enough way of obtaining stray briefs is to be the first to enter, and the last to leave Westminster Hall. Stroll down at half-past 8 or 9 every morning, so as to reach Westminster Hall from your residence or chambers at or about a quarter past 9, and do not leave till every one of the three Common Law Courts are up. It sometimes happens that attorneys and attorneys' clerks do not find the particular man they want to open the pleadings or to make a motion, and in such event 'the early bird picks the worm.' There was Mr. —, formerly an attorney, and for many years, a quarter of century before his retirement a barrister-at-law. This worthy gentleman, for many years of his life, made a considerable addition to his income each term by adopting this course. He was always to be found, early and late, at his post. He did not even retire to Howard's coffehouse to lunch, but carried down in his pocket a hunch of bread which he consumed in Court a little before one o'clock daily. He was ready to open the pleadings of any stray casual attorney, or

to hold a brief for any brother barrister who was obliged to be at Guildhall, or who was detained at home by illness. Follow the example of this persevering man. If you have stuff in you, you are sure to prosper. If you are passably dull and industrious merely, attorneys and leaders will remember this industry, and render you a service, where superior merit or superior interest does not interpose."

Another piece of advice is, that the barrister should be *busy in Court*.

"Should you have nothing to do in Court, fill your bag with the Blue Books of reports, and bringing down with you your Phillips or Starkie on Evidence, write up the latest points decided in a neat hand. Should you have a ruler and red ink to help you, country attorneys will think you the more profound and methodical. A wicked wag, of a circuit to which I don't belong, tells a story of a man on that circuit who acquired the repute of being a profound lawyer by posting up in red ink the latest decided points. They called him a deeply red (read) fellow."

Next he is recommended to announce an *intended Book*.

"Get your publisher to advertise you on the cover of the Blue Books as bringing out a Practical Treatise on the Law of Landlord and Tenant, on Marine Insurance, or any other taking and popular subject. You may, or you may not, have any fixed intention of completing these treatises, or even commencing them; but what matter? Your name will go forth to the public, and people will say, 'What a deuced industrious fellow that — is! See, here he not only reports cases in Court, but is bringing out a new edition of Sheppard's Touchstone, and Abbott on Shipping,' &c."

He is also particularly advised to discard elevated notions of the law.

"A great many persons uninitiated in the mysteries of the law are under the impression that a young barrister who has formed a high estimate of his profession or calling, is sure to succeed. This is a general mistake. The experience of any man who has been 10 years in the Profession must suffice to show him that the man likely to be left in the background is your *tyro*, who has formed a lofty estimate of his own Profession. It is your legal tradesman with level views, supple, thrifty, fawning, shrewd, and practical, that is likely to make a livelihood at the Bar, and not the man whose mind is stored with the treasures of science and literature."

He should seek for *Parliamentary notoriety*.

"When you have been two or three years at Sessions, come out with an address to the independent electors of the largest town on the Circuit you travel, adopting in it and exaggerating every popular cry. This is sure to

get your name known, and to procure you some business. It might be well worth your while to hire a room at a leading inn, and address the electors on your pretensions."

"—There are various ways of creeping into Election Committees, general Parliamentary and House of Lords business. As to Election Committees, unsuccessful candidates of cities and towns or ex-members defeated, being barristers, may sometimes get into a run of this business, provided such defeated candidate or ex-member be on good terms with the Financial Secretary of the Treasury, or with the electioneering manager or parliamentary agent of his party. Should the barrister be the brother, son, or cousin of a peer voting with the Government, or of a doubtful vote, or the brother of a member of the lower House in the like category, his chances of employment are, of course, greatly increased."

*Parochial authority* is also to be sought for:—

"There is a low class of barristers who obtain some business by parish politics, or by being cater cousins with parish orators, vestry clerks, vestrymen, and such like. If a married man, it may be a good *spec.* to rent a house in a radical parish at vestries, open-air meetings, &c. Such displays are sure to render you notorious, and to get you sooner or later briefs on behalf of the movement party."

He should *conciliate the reporters.*

"At all assize towns editors and reporters from the country and provincial press attend in considerable numbers, and occasionally reporters from the London press. Be eminently civil and courteous to these brethren of the broad sheet. If you happen to be engaged in any cause, reflect that these gentry have the opportunity of immortalising you. For your civility, you may find yourself chronicled thus:—'Mr. A. addressed the jury for the prisoner in a most lucid and powerful speech,' or 'Mr. A. cross-examined the witnesses with great ingenuity and logical acumen.'"

And *conciliate the leaders of the Bar.*

"Touching references, it may be remarked, that a barrister who has devilled for a leader—who has been his pupil—who has danced with his ugly daughter—or promised her marriage—stands the best chance of having causes referred to his arbitration and award."

He should push his *mercantile connexions.*

"In *visi prius* business at Guildhall, mercantile connexion is of great service to a barrister. To be the son of a bank director, or of a great London merchant, or of a director of an assurance or dock company, or the son or son-in-law of a great bill broker, is almost a certain passport to a small share of business, which will give the forensic candidate—that which is most difficult to obtain—a fair start in his Profession. This start once obtained, a man of talent, industry, and conduct is sure to succeed."

He should *eschew literature and the press.*

"By many it is supposed that scholarship and scholastic attainments are an advantage to barristers, or that literary abilities and aptitudes must aid a man in a profession reputed learned. Never was there a greater mistake. Scholarship and scholastic attainments, without the aid of attorney friends to back you, are not of the slightest use. Literary aptitudes and abilities are a positive disadvantage. Many an attorney declined to give Talfourd briefs because he had been the author of plays and essays, and had written in magazines and periodicals, as many an attorney also at Sessions and Assizes refused to entrust his cases to Praed or to Hayward, both of whom have written books."

"If you be a person of presumed literary tastes, and have ever perpetrated a book or a novel, cause it to be announced in the usual organs of intelligence, that your professional avocations are so weighty and numerous, that you have 'forgone all custom' of literary labour, and renounced for ever 'the primrose path' of literature. I have seen these notifications three or four times from that renowned author Mr. Beattie, but I question whether the dog has ever had a brief the more in consequence. This maxim may therefore be considered a moot one. *Sed quære de hoc*, as Lord Coke saith."

"In most cases a connexion with the press, either as a writer or reviewer, is a positive disadvantage to a man at the Bar. There is the eminent counsellor Sambo Botherum for instance, the heavy leading-article writer; albeit, that 'intense orator' inordinately puffs his own speeches and his 'few and far between' exhibitions as counsel, both in London and elsewhere, in his leaders and ponderous paragraphs, yet Botherum is simply notorious. Notwithstanding the changes rung on 'honourable and learned gentleman,' 'profound and powerful speech,' 'masterly statement,' 'keen dissection of the evidence' &c., Botherum does not get business. Clients will not have his proffered services even without a fee."

## SITTINGS OF THE CHANCERY COURTS ON SATURDAYS.

VICE-CHANCELLOR *Stuart*, at the rising of his Court, on Saturday, the 11th inst., stated that the *Lord Chancellor* had expressed a desire that all the Chancery Judges should in future rise on Saturdays at three o'clock punctually. An application had been made to his Lordship to induce him to rise at an earlier hour on Saturdays, but this application his Lordship had declined to accede to. He had, however, expressed his wish that the Courts should leave off business at three, and this rule he should at all times adhere to, except where it was



the wish of counsel to proceed further in any part-heard case.

For his own part, the Vice-Chancellor said he had always considered that three o'clock was the time after which no new cause should be proceeded with, but still it was often very desirable that a counsel should not be interrupted in his address, and that he should have an opportunity of continuing his speech to a later period of the day. Such a course was sometimes highly desirable both for the interest of the Court and the suitors.

### COUNTY COURTS REGISTRY.

THIS Registry was established under the 15 & 16 Vict. c. 54, for the protection of trade, and to afford facilities to executors and administrators in administering the estates of testators and intestates, in which offices all judgments for 10*l*. and upwards, and all petitions for protection from process filed in the County Courts throughout England and Wales, are recorded.

Parties not resident in London can ascertain through the clerk of the Court, whether any person seeking to obtain credit or goods of them, has an unsatisfied judgment recorded against him, or has filed a petition for protection in any of the 500 County Courts, or can obtain the same information by addressing a letter to the Registrar, in London.

#### TABLE OF FEES,

*Payable for Searches, &c.*

|  | £ | s. | d. |
|--|---|----|----|
| For every search made at the registry for a judgment or petition for protection                                    | 0 | 0  | 6  |
| For 40 searches to be made within two months<br>(to be paid in advance.)   | 0 | 10 | 0  |
| For every certificate of search obtained, either through "the clerk of the Court," or by letter to "the registrar" | 0 | 2  | 0  |
| For having the record of any judgment removed from the register<br>(to be paid to "the clerk of the Court.")       | 0 | 1  | 6  |

1st November, 1854.

### ADMISSION OF SOLICITORS.

#### NOTICE.

*Secretary's Office, Rolls, Nov: 9, 1854.*

THE Master of the Rolls has appointed Saturday the 25th of November instant, at the Rolls Court, Chancery Lane, at four in the afternoon, for swearing in Solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year, at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Friday, the 24th instant.

### SELECTIONS FROM CORRESPONDENCE.

#### SATURDAY HALF-HOLIDAY.

I am convinced that ninety-nine out of every hundred principals in the Profession are as anxious for this boon to be accorded as are the clerks, for whom it is specially intended. Reasons quite sufficient have already been urged, why it should be granted—on physical and religious grounds it is greatly to be desired—the mind as well as the body requires rest and relaxation. Divine wisdom has appointed one day out of the seven for the former, let not man, therefore, grudge a portion of one of the remaining six days for the latter.

"Non semper aram tendit Apollo."

Why the Legal Profession in London should be behindhand in such a step it is difficult to say, unless it arises from its slavish captivity to precedent. Let it for once arouse itself, shake off its trammels, and follow the humanizing course of its Scottish brethren and of the large mercantile and trading community of this great city. True philanthropy would not hesitate for a moment, and I am quite sure that when the subject is properly brought before the learned and enlightened head of the Profession, the reasonable request of the poor clerks will not be unheeded. SIGMA.

### RESULT OF MICHAELMAS TERM EXAMINATION.

THE Candidates who were entitled to attend the Examination on Tuesday last, the 14th instant, were in number 139, subject to the consideration of some of the testimonials which were incomplete, partly from want of information, and partly from negligence and inattention to the rules of Court and the regulations of the Examiners. These rules and regulations are very clearly expressed and have been long promulgated. The candidates appear to forget that if they are not complied with, the Examiners might properly decline to take their examination, and they would have to renew their notices and attend another Term. Indeed, we incline to think, it would be useful, where there is a serious neglect of the rules, to direct that the applicant should come again. It might be a salutary lesson, and prevent the young attorney from delaying too long the ex-

examination of his witnesses, or the delivery of his briefs, or coming into Court too late, or being insufficiently prepared with the orderly arrangement of his documents and papers!

According to the printed list of Notices of Admissions for this Term, there were . . . 150

To these were added the names of Candidates for examination who had not given notice of admission, namely . . . 47

Making in all . . . 197

But of these, several had been examined and passed in previous Terms, in number . . . 14

Leaving no less than . . . 183

Of these a large number omitted to deposit their credentials, viz. . . . 44

Reducing, as already stated the number to 139

On the day of examination three were absent, and one withdrew about the middle of the day, feeling that he should not be successful if he remained.

Of the number thus reduced to 135, 20 were postponed, and 115 passed.

The Examiners were Master Methold, Master Griffith, Mr. Holme, Mr. Palmer, Mr. Leman, and Mr. Lake. They were occupied not only during the whole of the day of Examination but the following day from ten till five o'clock.

## NOTES OF THE WEEK.

### LAW APPOINTMENTS.

THE Queen has been pleased to appoint *William Swainson, Esq.*, Attorney-General of New Zealand, to be a Member of the Legislative Council of New Zealand.

The Queen has also been pleased to appoint *Sir William Gibson Craig, Bart.*, to be one of

the Board of Supervision for Relief of the Poor in Scotland, in the room of *William Murray, Esq.*, deceased.

The Queen has further been pleased to appoint *Robert Andrews, LL.D.*, one of her Majesty's Counsel, *Henry George Hughes, Esq.*, one of her Majesty's Counsel, and *Archibald John Stephens, Esq.*, Barrister-at-Law, to be three of her Majesty's Commissioners for inquiring into the endowments' funds, and actual condition of *Schools* endowed for the purposes of Education in Ireland, and the nature and extent of the instruction given in such Schools.—From the *London Gazette* of Nov. 10.

*John Melville, Esq.*, Writer to the Signet, has been elected Lord Provost of the city of Edinburgh.

### FURTHER PROROGATION OF PARLIAMENT.

It is this day (14th November), ordered by her Majesty in Council that the Parliament, which stands prorogued to Thursday the 16th day of November instant, be further prorogued to Thursday, the 14th day of December next. From the Supplement to the *London Gazette* of 14th November.

### SOLICITORS ELECTED AS MAYORS.

*Doncaster*, Mr. Wm. Edwood Smith.

*Exeter*, Mr. John Daw.

*Newport, Isle of Wight*, Mr. Charles W. Estcourt.

*Chippenham*, Mr. Broome Pindiger.

*Yarmouth*, Mr. C. J. Palmer.

*Boston*, Mr. F. Cooke.

*Grantham*, Mr. R. A. White.

### RENEWAL OF CERTIFICATE.

*Day after Michaelmas Term, 1854.*

*Oldershaw*, William Watson, 2, New Broad Street, and Waltham Cross.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*In re Universal Salvage Company, ex parte Murray's Executors.* Nov. 9, 1854.

WINDING-UP ACT.—ADMISSION OF CLAIM OF DIRECTOR'S EXECUTORS FOR ADVANCE.

It appeared that at an annual general meeting of a joint-stock company, the fact of an advance of money having been obtained from the directors upon promissory note was stated, but the transaction was not confirmed at the meeting pursuant to 7 & 8 Vict. c. 110, s. 29, in consequence of an adjournment. At the adjourned meeting the reports of the secretary and the auditors, mentioning such advances, were

adopted: Held, that the provisions of the Act were sufficiently complied with to entitle the executors of a director, who had made an advance, to be admitted as a creditor on the company being wound up.

THIS was a motion to reverse the decision of the Master disallowing a claim of 300*l.*, with interest, which had been paid by the Hon. Mr. Murray, one of the directors, to the use of the above company. It appeared that, in August, 1845, the directors passed a resolution, whereby 2,000*l.* was to be raised on the security of the directors, and in May, 1846, promissory notes, signed by two directors, were given to the directors advancing the sum of 300*l.*, which was agreed should be the amount to be ad-

vanced by each. It also appeared that at the ensuing annual general meeting these facts were stated, but that the transaction had not been confirmed in consequence of an adjournment, although at the adjourned meeting the reports of the secretary and auditors, which mentioned such advances, were adopted. The Master having disallowed the claim of Mr. Murray's executors, this appeal was presented.

By the 7 & 8 Vict. c. 110, s. 29, it is enacted, that "if any contract or dealing" "shall be entered into, in which any director shall be interested, then the terms of such contract or dealing shall be submitted to the next general or special meeting of the shareholders to be summoned for the purpose; and that no such contract shall have force until approved and confirmed by the majority of votes of the shareholders present at such meeting."

Bacon and Baggallay in support; Selwyn for the official manager, contra.

The Lords Justices said, that it was not necessary to issue a summons for a general meeting stating the special matter, in order to obtain the confirmation of the transaction by the shareholders, as it had been represented to the shareholders that a loan had been made, and it was open to any shareholder to have objected at the adjourned meeting, and to have taken their opinion whether the transaction should be confirmed. The claim must, therefore be admitted for both principal and interest.

#### Master of the Rolls.

Attorney-General v. Peacock. Nov. 8, 1854.

PUBLIC HEALTH ACT.—APPLICATION OF RATES BY LOCAL BOARD TO OBTAIN ACT OF PARLIAMENT.—INJUNCTION.

*A decree was made perpetual for an injunction to restrain a local board of health from applying the rates levied under the Public Health Act, towards defraying the expenses of obtaining an Act of Parliament to enable them to purchase the works of the district gas and water companies, and to supply the district in their stead, and they were ordered to pay the moneys so applied, with costs.*

THIS was a motion for a decree, to make perpetual the injunction granted in this information, which was filed to restrain the local board of health for the district of Barnsley, Yorkshire, from applying the rates levied under the Public Health Act, 1848 (11 & 12 Vict. c. 63), towards defraying the expenses of obtaining an Act of Parliament to enable them to purchase the works of the district gas and water companies, and to supply the district in their stead.

R. Palmer and Simpson in support; Roupell and Sheffield for the local board of health, who submitted to a decree; Terrell for the defendant.

The Master of the Rolls said, that the injunction would be made perpetual, and that the

local board of health must repay the sum expended in the manner complained of, with the costs.

#### Vice-Chancellor Kindersley.

Wynck v. Grant. Nov. 6, 8, 1854.

ADMINISTRATION OF ASSETS.—RIGHT OF EXECUTORS TO RETAIN DEBT DUE TO THEMSELVES.

*A testator, who had settled certain moneys on his marriage, on his intended wife, died, having appointed two executors, against whom an administration suit was instituted and charging a breach of trust. The wife died before decree, appointing her husband's executors as the executors of her will: Held, that they were entitled to retain the amount due under the settlement in priority to the other creditors.*

It appeared in this administration suit that the testator, Sir John P. Grant, had settled, on his marriage, certain moneys on his wife, and upon his death had appointed Mr. Thomas G. Gardiner and Mr. James Gibson Craig his executors, and that they had been also appointed the executors of Lady Grant upon her death, which took place before decree. The suit alleged a breach of trust by the testator, and the executors claimed the amount due under the settlement in priority to the other creditors. It appeared that the estate would be insufficient to pay all the creditors in full, in the event of the breach of trust being established.

Glasse and A. Smith for the plaintiffs; Giffard and Cairns for the defendants.

The Vice-Chancellor said, that the right of a creditor to retain money in satisfaction of a debt due to himself, as against other creditors, *pari passu*, was a legal one, and depended on the principle that he could not sue himself as the other creditors could. The question was, whether the right of priority existed upon the wife's death before decree as it would have had she been living. If there had been a decree, the right to retain would have been prevented, but until then all the creditors could exercise their legal rights, and it could not be assumed that there would be a decree. The executors were therefore entitled to retain the moneys in question out of the estate.

Banks v. Powell. Nov. 10, 1854.

PAYMENT OF MONEY OUT OF COURT TO ESTABLISH BUSINESS.—AFFIDAVIT.—PRACTICE.

*Upon a petition for the payment out of Court of a sum of money, to set up the petitioner, a minor and his wife, in right of whom he took, and who joined in the petition: Held, that there must be an affidavit of some competent person as to the probability of success, and who was willing to superintend the business.*

THIS was a petition for the payment out of Court of a sum of money, for the purpose of setting up the petitioner and his wife in the business of a mercer and haberdasher, &c. It appeared that the husband was still a minor, and that he was entitled to the money in right of his wife, who also joined in the petition, and that her brother-in-law was willing to undertake the superintendence of the business.

*W. Morris* in support; *F. S. Williams* for other parties.

The *Vice-Chancellor* said, that there must be an affidavit of some competent person as to the probability of success, and who was willing to superintend the business.

*In re Port Phillip Emigration Company.* Nov. 10, 1854.

**MASTERS' ABOLITION ACT. — REFERENCE UNDER WINDING-UP ACTS.**

*Under the 15 & 16 Vict. c. 80, s. 10, references for the winding-up of joint-stock companies, under the Acts of 1848 and 1849, are made to the Master and not to Chambers.*

THIS was a petition for an order to wind-up the above company, which had been provisionally registered. It appeared that the petitioners had been threatened with legal proceedings in respect of the liabilities which had been incurred.

*Rozburgh*, in support, referred to s. 10 of the 15 & 16 Vict. c. 80, which enacts, that "from and after the first day of the Michaelmas Term, 1852, no reference shall be made to any of the Masters in Ordinary of the said Court, except in cases in which, from some previous reference made in the cause or matter, or in some other cause or matter connected therewith, the Court may think it expedient to make such reference, and except in matters arising under the Joint-Stock Companies Winding-up Acts, 1848 and 1849."

The *Vice-Chancellor* said, that the reference must accordingly be made to the Master and not to Chambers.

*Vice-Chancellor Wood.*

*Buckley v. Cook.* Nov. 9, 1854.

**COMMON LAW PROCEDURE ACT, 1854. — DISCREDITING WITNESS.—PRACTICE.**

Held, that the 17 & 18 Vict. c. 125, s. 22, which enables a party to discredit his own witness extends under s. 103 to the Court of Chancery.

Where the evidence was not closed, held that the Act applied, although the witness was examined before it came into operation.

The order was made, although the evidence complained of was given on the cross-examination of the witness by defendants in the same interest as the plaintiff.

THIS was a motion in this suit to set aside a marriage settlement, for liberty to the plaintiff to prove before the examiner that one of the witnesses, named Rice, had, on another occasion, made statements inconsistent with the evidence he had given when examined in the cause on behalf of the plaintiff.

*Rolt* and *Eddie*, in support, referred to the 17 & 18 Vict. c. 125, s. 22, which enacts, that "a party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the Judge, prove adverse, contradict him by other evidence; or, by leave of the Judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement;" and to s. 103, which directs, that "the enactments contained in sections 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32, of this Act shall apply and extend to every Court of Civil Judicature in England and Ireland."

*Daniel* and *Cankrien*, contra, on the grounds that the examination had taken place in June, and the Act came into operation on October 24; that the evidence was given on the cross-examination by some of the defendants in the same interest as the plaintiff; and that the Act did not apply to proceedings in Chancery.

*Selwyn* for other parties; *Lewis* for the trustees of the settlement.

The *Vice-Chancellor* said, that if he held the section did not apply to proceedings in the Court of Chancery, the suitors in that Court would be deprived of the advantage of one of the most valuable Acts for amending the law of evidence, and the 22nd section had a reasonable bearing on the proceedings here. The evidence was not closed, and the fact of its having commenced before the Act came into operation was therefore immaterial. An order would be made for the plaintiff to produce his evidence to prove that the witness Rice had, on a previous occasion, made statements inconsistent with his present evidence, setting out in the order the answers it was intended to contradict, and with liberty to either party to produce Rice again for general examination. In future cases, where questions were put for the purpose of contradicting a witness by another witness, the questions as well as the answers should be taken down by the examiner.

*Court of Queen's Bench.*

*In re Moss.* Nov. 9, 1854.

**TAXATION OF COSTS. — INSTRUCTIONS FOR BRIEF AND ATTENDANCES ON WITNESSES. — ATTENDING TRIAL.**

On the taxation, as between solicitor and

*client, of a bill of costs of a solicitor, incurred in conducting a prosecution for the non-repair of a highway, the Master allowed a sum of three guineas for instructions for brief, together with charges for attendances on witnesses, and also two guineas for attending the trial. A rule nisi for a reversal of the taxation was refused.*

THIS was a motion for a rule nisi, to review the taxation of the bill of costs of Mr. William Henry Moss, an attorney, of Hull, and which had been incurred in conducting a prosecution for the non-repair of a highway. It appeared that the defendants had paid the costs as taxed between party and party, and that on the taxation, as between solicitor and client, the Master had allowed a sum of three guineas for instructions for the brief, and several extra charges for attendances on witnesses.

Gray in support, on the ground that the attendances on the witnesses formed part of the instructions for the brief. He also objected to the allowance of two guineas for attending the trial.

The Court said, that a reasonable sum only had been allowed for instructions for the labour bestowed. It might be necessary for the attorney on the trial to have a clerk looking after the witnesses while he attended counsel. The rule would therefore be refused.

*Ex parte Long.* Nov. 9, 1854.

#### FRATERNAL SOCIETY.—JURISDICTION OF POLICE MAGISTRATE IN DISPUTES.

*Held, that in order to give the police magistrate jurisdiction to hear a dispute between a benefit society and one of the members, it is necessary to show that the proceedings before the arbitrator are a nullity; and where that was not shown, a rule was refused on the magistrate to hear such dispute.*

THIS was a motion for a rule nisi on Mr. Jordine, the police magistrate, to hear a dispute between the United Kingdom Benefit Society and the widow of Charles Long, who was for some years a member of the society, and had been expelled for violating the rule prohibiting any member on the sick list from performing any business for profit or reward.

Hulton in support, on the ground that the rule requiring a member to be summoned before expulsion had not been complied with, and also that the proceedings before the arbitrator after his death had been conducted with unfairness.

The Court said, that in order to give the magistrate jurisdiction, it was necessary to show the proceedings before the arbitrator to be a nullity, and that, as this had not been done, the rule must be refused.

#### CRIME CASES RECORDED.

*Regina v. Beeton.* Nov. 11, 1854.

#### INDICTMENT FOR MURDER.—ADMISSION IN EVIDENCE OF DEPOSITIONS TAKEN ON CHARGE OF WOUNDING WITH INTENT.

*On an indictment for murder, it appeared that the depositions of the deceased were taken upon a charge of wounding with intent to do grievous bodily harm: Held, that the depositions were nevertheless admissible, and the conviction of the prisoner was affirmed.*

THIS was a point reserved by Crompton, J., in this indictment for murder, as to the admissibility of the depositions of the deceased, which were taken before he died, upon the prisoner being charged with wounding with intent to do grievous bodily harm. The prisoner was found guilty and sentenced to transportation.

*Held* that for the prisoner, on the ground that the depositions were not taken on the same charge as that for which the prisoner was indicted.

*Scotland, contra*, was not called on.

The Court (per Jervis, C. J., Alderson, B., Coleridge, J., Martin, B., and Crowder, J.) said, that according to *Regina v. Smith*, 2 Stark. N.P. 208, the depositions were admissible, and the recent Statute extended rather than restricted the common law. The conviction would therefore be affirmed.

*Regina v. Simpson.* Nov. 11, 1854.

#### INDICTMENT FOR STEALING FROM THE PERSON.—EVIDENCE AS TO REMOVAL.

*It appeared on an indictment charging a prisoner with stealing a gold watch and chain, that he had taken the watch out of the prosecutor's pocket and drawn the chain out of the button-hole, when his hand was seized by the prosecutor's wife, and the key caught in a button of the waistcoat: Held, that there was evidence of a sufficient stealing from the person to support a conviction.*

ON the trial of this indictment before Mr. Bodkin, at the Central Criminal Court, against the prisoner for stealing a gold watch and chain, it appeared that the prosecutor carried the watch in his waistcoat pocket, and that the prisoner had taken it out of the pocket and drawn the chain out of the button-hole, when his hand was seized by the prosecutor's wife, and the key caught in a button. The prisoner was found guilty, subject to the point reserved whether the offence only amounted to an attempt to steal.

*Parry* for the prisoner.

The Court held, that there was a sufficient removal to constitute a stealing from the person, and affirmed the conviction accordingly.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—"Still attorneyed at your service."—*Shakespeare.*

SATURDAY, NOVEMBER 25, 1854.

### LAW REPORTING AND LAW BOOKS.

THE business of Law Reporting, it must be admitted on all hands, has arrived at an extraordinary state. Formerly the reports of the decisions in the Superior Courts were few and brief, compiled and published under the authority of the Courts. Now there are what are called the "regular" Reports, the successors of Vesey and others in Equity, and the Term Reports, and others at Common Law. Each Court has its separate reporter, and some have several. A bulky volume must be made up of the cases which come before every Judge. If the decisions are important, well; but, important or not, the volume must be filled and make its periodical appearance.

Then, besides the regular reports, there are various others of more or less utility to the Profession. Amongst these may be placed, as first in date, the *Law Journal*, comprising all the Courts of Law and Equity, with the Statutes and Bankruptcy Lists, &c., published monthly. Next in order of importance appear the *Law and Equity Reports*, established within the last two years, also including all the Courts, and published monthly or thereabouts. Both these series of reports are issued at a moderate price, very considerably less than their regular brethren, and necessarily more concise.

The Weekly Journals, which supply somewhat full reports of decisions in all the Courts, are *The Jurist*, long established, and the *Law Times*, which came later into the field, but has maintained its ground for upwards of ten years. The decisions reported in these periodicals are generally of recent date, but the space is often filled up

by unnecessarily long details, and not unfrequently by cases nearly twelve months old.

Within the last year or two another competitor has come forth, called the *Weekly Reporter*,—the plan of which is, we think, an improvement on its predecessors, for it gives none but recent cases and states them concisely. This is, in fact, the course adopted by the *Legal Observer*, which selects the most important decisions, reports them concisely and never travels back to an antecedent Term.

We have been induced to notice this subject in consequence of an able article in *The Jurist* of the 11th inst., in which it is observed that—

"The reports of the cases now come upon us in such profusion, that the mere daily labour of 'noting up' consumes more of our energy and time than was formerly sufficient for our entire studies. To remember the principal cases is absolutely impossible. But as if this were not enough, the introduction of Dr. Story's flimsy compilations has brought into our Courts the foppery of citing American decisions.

"The consequence of this state of things is, that most students and lawyers abandon the attempt to keep up their knowledge of the reports and rely on text-books. This marks them at once as *second-rate lawyers*; and the highest standard once relinquished, there is no assignable minimum of learning with which they may not be content.

"The great evil lies in the reporting system; and especially now that the fusion of law with equity has commenced in earnest, there is no hope that any lawyer will be able to master his business until two things have been done—first, the purification and abridgment of the existing reports by authority resulting in either a chronological series or a digest of subsisting authorities in a concise form; and secondly, the establishment of an authorised staff of reporters for the future. If such a reform were

effected on a sound basis, *the Jurist* would gladly retire, and seek some new form of existence."

After these candid and forcible remarks from the Editor of *The Jurist*,—a work belonging to, or connected with, eminent publishers, we may be permitted to offer some comments on the past and present plan of Law Reporting. We claim credit for having pointed out many years ago, the delay and expense of Law Reports. It was, at that time, often *three* and generally *two* years before the decisions of the Superior Courts were published, and in the meantime it sometimes happened that suits were commenced, or actions brought, founded on questions of Law or Equity which had been previously decided, though not reported. This evil has been in a great degree remedied. The next prominent objection was to the enormous expense of the regular reports. They cost about 20*l.* a year. This grievance also has been much abated by the rivalry of other reports, such as the *Law Journal*, and latterly by the Law and Equity Reports. *The Jurist*, though issuing from booksellers interested in the regular Reports, has largely contributed to this result. The *Law Times*, also, may fairly claim a share in hastening the publication of the Reports and diminishing the expense.

But still in all these works there remain many imperfections, of which the Profession may justly complain. 1st. Many of the reports are useless: they set forth a complicated state of facts, which in all human probability can never occur again, and the decision on which involves no real question of Law. The facts being ascertained, the legal conclusion follows beyond all doubt.

2nd. Decisions are reported which decide again and again the same point. The parties have indeed attempted hopelessly to establish a distinction, and have failed. The rule laid down is precisely the same as in twenty previous cases.

3rd. The reports are of far too great length. Immaterial facts and circumstances are detailed, equally tedious and unimportant to the question at issue. The arguments of counsel are spread out unnecessarily, and a multitude of decisions are cited, where one or a few leading authorities would be sufficient. In new and important cases, where the judgment may establish, or extend, or modify a general principle, the language of the Court, perhaps, cannot be too fully set forth; but in the majority of cases, we believe it is unnecessary to report all the re-

marks that fall from an eloquent Judge, which, however interesting to the parties in the particular case, can form no general precedent to guide future litigants.

The unlimited competition which now prevails between the regular Reports and the Monthly and Weekly, must be mischievous to the Law as a science, and intolerably inconvenient to both branches of the Profession. It is utterly impossible for a man, engaged in any extent of practice, to read all that is reported, still less to digest or master the results. We ought to return, therefore, to the old practice of authorised reports, sanctioned by the several Courts, and the reporters should be remunerated rather for the brevity than the length of their publications. We hear much that Pleaders, Conveyancers, Attorneys, and Solicitors should be paid, not for the number of folios in their drafts but for their skill, labour, and responsibility. This principle should be applied to Law Reporting.

We turn now to the dangerous facility with which *law books* are manufactured. They are perhaps unavoidably ephemeral. The law itself, and its mode of administration, are in such a state of incessant change, that it appears hopeless for any, even the most learned and diligent lawyer, to compile a book of enduring magnitude. Every Session brings forth its progeny of new Enactments and almost every Term its new Rules and Orders of Procedure. Hence the legal writer is driven, almost necessarily, to bestow his tediousness on some new Statute, showing what the law was, what probably (but not certainly) the law is; but which is no sooner ascertained by judicial decision, than, *presto*, it is changed to something else.

Then looking at the crowded state of the Bar, and at the natural ambition of its members to distinguish themselves, we find that many of them "rush into print" on the same subject, and hence where the solitary author of a treatise might not only earn fame but emolument, the wants of the Profession being overstocked, few, if any, of the learned authors are adequately rewarded for their labours, and consequently are not stimulated to new exertions.

*The Jurist* observes that—

"The text-books are rapidly deteriorating, from several causes besides the general decline of science in the class which is to produce them. First, the increasing tendency of the Judges to decide on particular precedents, rather than on a wide induction from many

precedents, is destroying the scientific character of the law, and thus rendering the task of an institutional writer more and more repulsive; secondly, the mere labour of collating and criticising the decisions, is almost beyond the powers of humanity; and, thirdly, the inducement to encounter that labour is daily diminishing. Confidence in the stability of the law has vanished. The annual alteration and refashioning of large branches of the law is now considered to be a part of the constitution; and besides the consequent discouragement to study, we have thus further result, that a text-book, however learnedly and carefully prepared, has no pecuniary value in the publishing market. No law book can bring an adequate return for its expenses and the risk of the adventure in less than six or seven years; and as things are now ordered, no publisher can hope that any book he publishes will not be rendered obsolete in the ensuing Session by some remorseless amending Statute."

In noticing the changes which have taken place in the Profession, *The Jurist* considers the loss of emolument occasioned by the establishment and extension of the *County Court* Jurisdiction, as temporary, "though the loss has been great, and the blunder which it caused grievous." He conceives that the professional arrangement will soon be adjusted, according to the laws of demand and supply; and in the course of no long time "the country will have learned, in the school of experience, the inherent unsoundness of the County Court system."

"We shall have discovered" (he says) "that cheap law is not economical justice; and as we have already found that the science of Medicine is not advanced by giving over criminals for dissection, we shall by degrees learn to distrust the *experimentum in corpore vili* in every form. There is no reason to fear the decay of the Profession. No civilised society can dispense with the counsellor, the draftsman, or the advocate; and the Profession will be honoured so long as it is true to itself, and resolved to rest its claims on its present services to society rather than on tradition."

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### BURIALS BEYOND THE METROPOLIS. 17 & 18 VICT. c. 87.

THE following is the substance of the "Act to make further Provision for the Burial of the Dead in England beyond the Limits of the Metropolis," passed on the 10th August, 1854:—

By the 16 & 17 Vict. c. 134, provision is made for providing burial grounds for parishes by burial boards to be appointed by vestries; and in some cases of parishes wholly or partly within boroughs there is difficulty or inconvenience in providing requisite places of burial

for the inhabitants under the powers of the Act, and it is expedient that in such cases such places of burial should be provided by the councils of such boroughs: it is therefore enacted as follows:

1. In case it appear to her Majesty in Council, upon the petition of the town council of any borough, stating that an order in council has been made for closing all or any of the burial grounds of one or more parishes being wholly or partly within such borough, that there is difficulty or inconvenience in providing, under the powers of the said Act of the last Session of Parliament, requisite places of burial for the inhabitants of such parish or parishes, it shall be lawful to order that power shall be vested in the council of such borough for providing such places of burial under the provisions of this Act: provided that notice of such petition and of the time when it shall please her Majesty to order that the same be taken into consideration by the Privy Council shall be published in the *London Gazette*, and in one of the newspapers usually circulating in such borough, one month at least before such petition is so considered.

2. Upon the making of such order, the borough council to have all the powers vested in burial boards under 16 & 17 Vict. c. 134, and the 15 & 16 Vict. c. 85, except the provisions relating to the constitution, incorporation, meetings, entries of proceedings, and accounts of burial boards, shall extend and be applicable to such borough and the council thereof, and to any burial ground and any place for the reception of the bodies of the dead previously to interment which may be provided by such council under this Act, in like manner as the same are applicable to any parish and the burial board thereof, and to any burial ground and any such place as aforesaid provided by such burial board, save that no approval, sanction, or authorisation of the vestry of any parish shall be requisite.

3. All expenses of carrying this Act into execution in any borough shall, subject to the provisions hereinafter contained, be chargeable upon and paid out of the borough fund and borough rates of such borough, or partly out of such fund and partly out of such rates, in like manner as if the same were expenses incurred in carrying into effect the provisions of the 5 & 6 Wm. 4, c. 76; and any money to be borrowed under the authority of this Act by the council of such borough, and the interest thereon shall be charged by such council on the moneys out of which such expenses are by this Act directed to be paid, and the said provisions hereby extended and made applicable to the said council shall be construed accordingly: and any surplus of money raised for defraying such expenses as aforesaid, and of the income of any burial ground provided by the council of any borough, which if the same were provided by a burial board for any parish would be applicable in aid of the rate for the relief of the poor of such parish, shall be applicable in aid of the borough fund or borough rates of



such borough, or in case a separate rate has been levied in parts only of such borough, for the purposes of this Act, as hereinafter provided, then such surplus shall be applied rateably towards payment or satisfaction of so much of any borough rate as may be leviable in such parts of such borough: provided always, that such surplus shall be ascertained upon the auditing of the accounts of the treasurer of such borough in the month of September in any year.

4. If any burial board under the Act of the last Session of Parliament, or the council of any borough acting under this Act, can at any time borrow at a lower rate of interest than that secured by any mortgage previously made by them and then outstanding and in force, they may so borrow accordingly in order to pay off and discharge any securities bearing a higher rate of interest, and to secure the repayment of the money so borrowed, and the interest to be paid thereon, in like manner as other monies authorised to be borrowed by such burial board or council under the Act of the last Session or this Act.

5. If at the time appointed by any mortgage for payment of the principal money secured thereby any such burial board or council are unable to pay off the same, they may borrow such sum of money as may be necessary for the purpose of paying off all or any part of such principal money, and secure the repayment of the money, and the interest to be paid thereon, in like manner as other moneys authorised to be borrowed by such burial board or council under the Act of the last Session or this Act.

6. The council of any borough shall act in execution and exercise of their duties, powers, and authorities under this Act in like manner as in execution and exercise of their duties, powers, and authorities under the 5 & 6 Wm. 4, c. 76; and every conveyance of lands to be purchased for the purposes of this Act shall be taken in the name of the body corporate of such borough, and such body corporate shall have power to hold such lands for the purposes of this Act; and no lands purchased under this Act by the council of any borough shall be sold, except with the like approbation and subject to the like restrictions as if sold under the 5 & 6 Wm. 4; and the signature of any member or members of such council shall not be necessary to any conveyance of any land so sold; and a receipt under the hand of the treasurer of such borough shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received.

7. The burial ground provided for any borough under this Act shall be deemed to be provided for such parishes wholly or in part situated in such borough as the town council shall determine.

8. The council of any borough in fixing and altering the fees, payments, and sums in respect of interments of the remains of persons, being inhabitants of that part of any parish

partly within and partly without the limits of such borough which is without such limits, and in respect of other rights to be exercised with reference to the interment of the remains of such persons, at a higher amount than the ordinary charge for the time being fixed by such Council; provided that such higher amount shall be fixed with the approval of one of her Majesty's Principal Secretaries of State.

9. Where, previously to the making of any order in Council, it appears, upon the petition of the town council, that any parish wholly or in part within such borough is provided with a sufficient burial ground, it shall be lawful to direct that no part of such parish shall be assessed towards defraying the expenses of executing this Act in such borough, and in such case no burial ground provided for such borough under this Act shall be deemed to be provided for such parish; and any money required to be raised in such borough for defraying such expenses, or paying any money borrowed under this Act by the council of such borough, or any interest thereon, by means of a rate to be levied in such borough, shall be raised by a separate rate, to be levied within such parts of such borough as are not exempted under such order from being assessed as aforesaid; and (so far as may be consistent with this provision) the council of such borough shall have all such powers for making and levying such rate, and all provisions shall be applicable in respect thereof, as in the case of a borough rate made under the 5 & 6 Wm. 4.

10. The powers of settling and fixing the fees or sums to be payable to the incumbent or minister, and of revising and varying the fees payable to the incumbent, clerk, and sexton, and other persons and bodies, and of substituting for such fees fixed annual sums, by ss. 33 and 37 of 15 & 16 Vict. c. 85, given to the vestry, and exercisable with the approval or consent of the bishop of the diocese, as therein mentioned, shall, with respect to fees and sums arising in or from any burial ground provided under this Act by the council of any borough, be transferred to such council, and be exercisable with the like approval or consent.

11. It shall be lawful for the council of any borough to appropriate for the purposes of this Act any land belonging to the body corporate of such borough, or vested in any feoffees, trustees, or others, for the general benefit of the borough, or for any specific charity; provided always, that where any land so appropriated shall be subject to any charitable use, such land shall be taken on such conditions only as the Court of Chancery, in the exercise of its jurisdiction over charitable trusts, shall appoint and direct.

12. So much of the Act of the 15 & 16 Vict. c. 85, as enacts, that "no ground (not already used as or appropriated for a cemetery) shall be appropriated as a burial ground or as an addition to a burial ground under that Act nearer than 200 yards to any dwelling house, without the consent in writing of the owner, lessee, and

occupier of such dwelling house," shall not extend or be applicable to or in respect of any burial grounds which have been or may be provided under the said Act of the last Session and this Act, or either of them, or to or in respect of any addition which has been or may be so provided to any burial ground: but no ground not already used as or appropriated for a cemetery shall be appropriated under the said Act of last Session and this Act, or either of them, as a burial ground, or as an addition to a burial ground, nearer than *one hundred yards to any dwelling house*, without such consent as aforesaid.

## ALPHABETICAL LIST OF STATUTES RELATING TO THE LAW.

### 17 & 18 VICTORIA.

- Acknowledgment of Deeds by Married Women; to remove Doubts concerning the due Acknowledgment of Deeds by Married Women in certain Cases; c. 75.
- Administration of the Estates of deceased Persons, to amend the Law relating to, c. 113.
- Admiralty, to appoint Persons to administer Oaths, and to substitute Stamps in lieu of Fees, and for other purposes, in the High Court of Admiralty, c. 78.
- Animals, to amend 12 & 13 Vict. c. 92, for the more effectual Prevention of Cruelty to, c. 60.
- Annuities, to repeal the Laws relating to the Enrolment of, c. 90.
- Assessed Taxes, to explain and amend 16 & 17 Vict. c. 90, relating to the Duties of, c. 1.
- Assessed Taxes, for better securing the collecting and accounting for, by the Collectors thereof, c. 85.
- Augmentation of benefices to extend the Provisions of the Acts for, c. 84.
- Bankruptcy, for regulating Appointments to Offices in the Court of and for amending the Laws relating to Bankrupts, c. 119.
- Beer; for further regulating the Sale of Beer and other Liquors on the Lord's Day, c. 79.
- Benefices, to extend the Provisions of the Acts for the Augmentation of, c. 84.
- Bills of Sale; for preventing Frauds upon Creditors by secret Bills of Sale of personal Chattels, s. 36.
- Bills of Sale, for the Registration of, c. 55.
- Births, to provide for the better Registration of, in *Scotland*, c. 80.
- Borough Rates, to amend the Law concerning the making of, in Boroughs not within the Municipal Corporation Acts, c. 71.
- Bribery at Elections of Members of Parliament, to consolidate and amend the Laws relating to, c. 102.
- Burials beyond the Limits of the Metropolis, to make further Provision for, c. 87.
- Canals, for the better regulation of the traffic on, c. 31.
- Capitular Estates, to continue and amend 14 & 15 Vict. c. 104, to facilitate the Management and Improvement of, c. 116.
- Chancery, to provide for the payment of the Salaries of the Sheriff and Sheriff Clerk of, in *Scotland*, c. 72.
- Chancery (High Court of), to make further Provision for the more speedy and efficient Despatch of Business in, c. 100.
- Chancery (Court of) of the County Palatine of Lancaster, further to improve the Administration of Justice in, c. 82.
- Church Building Acts Amendment; to facilitate the Apportionment of the Rent when Parts of Lands in Lease are taken for the Purposes of the Church Building Acts, c. 32.
- Civil Causes, to allow Verdicts on Trials by Jury, in, to be returned, although the Jury may not be unanimous, in *Scotland*, c. 59.
- Convict Prisons, for the Formation, Regulation, and Government of, in *Ireland*, c. 76.
- Common, Commonable, and other Rights, to facilitate the Purchase of, by the principal Officers of her Majesty's Ordnance, c. 67.
- Common Law Procedure Act; for the further Amendment of the Process, Practice, and Mode of Pleading in and enlarging the Jurisdiction of the Superior Courts of Common Law at Westminster, and of the Superior Courts of Common Law of the Counties Palatine of Lancaster and Durham, s. 125.
- County Court Extension Acts Amendment; to amend 13 & 14 Vict. c. 61, and 15 & 16 Vict. c. 54, relating to certain Proceedings in County Courts, c. 16.
- Court of Admiralty. *See* Admiralty.
- Court of Bankruptcy; for regulating Appointments to Offices in, c. 119.
- Courts of Law in England, Ireland, and Scotland, enabled to issue Process to compel the Attendance of Witnesses out of their Jurisdiction, and to give Effect to the Service of such Process in any Part of the United Kingdom, c. 34.
- Courts of Common Law; for the further Amendment of the Process, Practice, and Mode of Pleading in and enlarging the Jurisdiction of the Superior Courts of Common Law at Westminster, and of the Superior Courts of Common Law of the Counties Palatine of Lancaster and Durham, c. 125.
- Creditors; for preventing Frauds upon, by secret Bills of Sale of Personal Chattels; c. 36.
- Crime and Outrage, to continue 11 & 12 Vict. c. 2, for the better Prevention of, in *Ireland*, c. 92.
- Cruelty to Animals, to amend 12 & 13 Vict. c. 92, for the more effectual Prevention of, c. 60.
- Dead, to make further Provision for the Burial of, beyond the Limits of the Metropolis, c. 87.
- Deaths, to provide for the better Registration of, in *Scotland*, c. 80.
- Deeds, to remove Doubts concerning the due Acknowledgment of, by married Women, in certain Cases, c. 75.

- Durham (County Palatine of); for the further Amendment of the Process, Practice, and Mode of pleading in, and enlarging the Jurisdiction of, the Superior Court of Common Law of, c. 125.
- Ecclesiastical Courts, to alter and improve the the Mode of taking Evidence in, c. 47.
- Ecclesiastical Jurisdiction, for further continuing certain temporary Provisions concerning, c. 65.
- Election of Members of Parliament, to consolidate and amend the Laws relating to Bribery, Treating, and undue influence at, c. 102.
- Enrolment of Annuities, to repeal the Laws relating to, c. 90.
- Episcopal Estates, to continue and amend 14 & 15 Vict. c. 104, to facilitate the Management and Improvement of, c. 116.
- Estates; to amend the Law relating to the Administration of the Estates of deceased Persons, c. 113.
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- Highways (South Wales); for extending the Time for putting into execution 14 & 15 Vict. c. 16, for the better Management and Control of Highways in South Wales, c. 7.
- Highway Rates, to continue 4 & 5 Vict. c. 59, for authorising the application of, to Turnpike Roads, c. 52.
- Highways (Public Health Act); to indemnify Local Boards of Health as regards rating for the repair of Highways under the Public Health Act, 1848, c. 69.
- Inclosure of Lands; to authorise the Inclosure of certain Lands in pursuance of a Report of the Inclosure Commissioners for England and Wales, cc. 9, 48.
- Inclosure of Lands; to amend and extend the Acts for the Inclosure, Exchange, and Improvement of Land; c. 97.
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- Income Tax; for granting to her Majesty additional Duties on Profits arising from Property, Professions, Trades, and Offices, c. 10.
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- Income Tax; to continue 16 & 17 Vict. c. 91, for extending for a limited Time the Provision for abatement of Income Tax in respect of Insurance of Lives; c. 40.
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- Lands, Inclosure of; to authorise the Inclosure of certain Lands in pursuance of a Report of the Commissioners for England and Wales, cc. 9, 48.
- Lands, to amend and extend the Acts for the Inclosure, Exchange, and Improvement of, c. 97.
- Land Tax, for better securing the collecting and accounting for, by the Collectors thereof, c. 85.
- Law. See Courts of Law.
- Legislative Council (Canada); to empower the Legislature of Canada to alter the Constitution of the Legislative Council for that Province, and for other purposes, c. 118.
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- Libraries; to amend 16 & 17 Vict. c. 101, for extending the Public Libraries' Act, 1850, to Ireland and Scotland, c. 64.

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- Poor Law Board, to continue, c. 41.
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- Prisons; for the Formation, Regulation, and Government of Convict Prisons in *Ireland*, c. 75.
- Prisoners Removal; to amend the Law relative to the Removal of Prisoners in Custody, c. 115.
- Property and Professions, for granting to her Majesty additional Duties on Profits arising from, c. 10.
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- Property (Rateable), further to amend 15 & 16 Vict. c. 63, relating to the Valuation of, in *Ireland*, c. 8.
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- Public Health, to make better Provision for the Administration of the Laws relating to, c. 95.
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- Registration of Bills of Sale; for preventing Frauds upon Creditors by secret Bills of Sale of personal Chattels, s. 36.
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- Roads. *See* Turnpike Roads.
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- present War between Russia and England by the Russian Government a Misdemeanor, c. 123.
- Savings' Banks, to continue 11 & 12 Vict. c. 133 for amending the Laws relating to, and to authorise Friendly Societies to invest the whole of their Funds in Savings' Banks, in *Ireland*, c. 50.
- Secret Bills of Sale of Personal Chattels, for preventing Frauds upon Creditors by, c. 36.
- Securities (Heritable), to extend the Benefits of 8 & 9 Vict. c. 31, and 10 & 11 Vict. c. 50, relating to the Constitution, Transmission, and Extinction of, in *Scotland*, c. 62.
- Sewers; to continue and amend the Metropolitan Sewers' Act, c. 111.
- Shipping; to amend and consolidate the Acts relating to Merchant Shipping, c. 104.
- Shipping; to repeal certain Acts and Parts of Acts relating to Merchant Shipping, and to continue certain Provisions in the said Acts, c. 120.
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- South Wales, for extending the Time limited for putting into execution 14 & 15 Vict. c. 15, for the better Management and Control of Highways in, c. 7.
- Stamp Duties, to amend the Laws relating to, c. 83.
- Stamps, to substitute, in lieu of Fees, in the High Court of Admiralty, s. 78.
- Stock in Trade; to continue the Exemption of Inhabitants from liability to be rated, as such, in respect of Stock in Trade or other Property, to the Relief of the Poor, c. 66.
- Treason. See High Treason.
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- Trials by Jury, to allow Verdicts on, in Civil Causes, to be returned, although the Jury may not be unanimous, in *Scotland*, c. 59.
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- Turnpike Roads; to continue certain Turnpike Acts in Great Britain, and to make further Provisions concerning Turnpike Roads in England, c. 58.
- Turnpike Trusts' Arrangements; to confirm certain Provisional Orders made under 14 & 15 Vict. c. 38, to facilitate Arrangements for the Relief of and to make certain Provisions respecting Exemptions from Tolls, s. 51.
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- Wales (South); for extending the Time limited for putting into execution 14 & 15 Vict. c. 16, for the better Management and Control of Highways in, c. 7.
- Warwick Assizes; to repeal certain Provisions of 5 & 6 Vict. c. 110, concerning the holding of Assizes for the County of Warwick, c. 35.
- West Indies, to facilitate the Sale and Transfer of Incumbered Estates in, c. 117.
- Westminster, for the further Amendment of the Process, Practice, and Mode of Pleading in and enlarging the Jurisdiction of the Superior Courts of Common Law at, c. 125.
- Witnesses, to enable the Courts of Law in England, Ireland, and Scotland to issue Process to compel the Attendance of, out of their Jurisdiction, and to give Effect to the Service of such Process in any Part of the United Kingdom. c. 34.
- Youthful Offenders, for the better Care and Reformation of, c. 86.

#### NOTICES OF NEW BOOKS.

*The British Commonwealth: or a Commentary on the Institutions and Principles of British Government.* By HOMMERSHAM COX, M.A., Fellow of the Cambridge Philosophical Society, Barrister-at-Law, and Author of Treatises on the Differential and Integral Calculus. London: Longman, Brown, Green and Longmans. 1854. Pp. 576.

MR. HOMMERSHAM COX observes, in the Introduction to his work, that the number of Treatises in which the abstract principles of Government and its form in England are discussed, is very great; yet he conceives that the *social relations* of the different parts of the community have been so much altered since most of these Treatises were written, that they give but little information of the *present* practical working of our Constitution. He supports this justification, or necessity, for publishing a new work, by the following statement:—

"The extension of trade and commerce, the increase of wealth and population, the improvements of art and science and the diffusion of general knowledge, have had the effect of almost remodelling society within the period of recent history, and have introduced difficulties and complexities of legislation which were neither known to, nor anticipated by, the most celebrated writers, who have considered the ancient political institutions of this nation. Of no country is the literature more rich than ours in works, which treat with admirable freedom and perspicuity of the science of government, and in treatises which state, with great learning and research, the nature and history of our constitutional laws; but respecting a large

part of the vast and complicated machinery, by which, in modern times, the laws are established and executed, there are but few sources of general information. After careful inquiry, I have been unable to discover any book in which the modern principles of the British Constitution are systematically discussed and elucidated by reference to the actual state and numerous institutions of our Government.

"The need of such a work was, perhaps, never more apparent than at the present time, when political measures engage more general dispassionate attention than they ever received heretofore; and happily are discussed with a freedom from controversial asperity, which augurs well for their wise and impartial consideration. The great object of the present work is to show that our Government is, indeed, as I have, by the sanction of law and history, designated it—a COMMONWEALTH; that the several members of the community are bound together by common interests; that politics, rightly considered, are not a conflict of separate interests, but a harmony of them; that the Christian doctrines of peace and goodwill are as potent in civil affairs as in religion; that in a Christian state, as in a Christian church, there should be no schism in the body; but that the members should have the same care one for another; and whether one member suffer, all the members suffer with it; or one member be honoured, all the members rejoice with it."

The general scope of the volume may be thus described:—1st. The Principles of Government. 2nd. Of Domestic Government, comprising the Legislature, the Judiciary, and the Administration. 3rd. International Government. 4th. Colonial Government.

Under the head of the *Principles of Government*, Mr. Cox treats,—1. Of its Duties. 2. Its Rights. 3. The Divisions of the Offices of Government.

In treating of the *Legislature*, the subject is divided into:—1. The British Legislature. 2. The power of the Crown. 3. The power of the House of Lords. 4. Procedure in Parliament. 5. Passing public Bills. 6. Passing private Bills. 7. Parliamentary Documents. 8. Ways and Means. 9. Cabinet and Political parties. 10. Purposes of Parliamentary Representation. 11. Parliamentary Franchise. 12. Parliamentary Suffrage. 13. Elections. 14. Public Opinion. 14. Public Meetings and the Press. 16. Commissions of Inquiry.

Regarding *Judicature*,—which is more peculiarly within our province,—the topics considered are as follow:—

1. "*Divisions of Law* ; Blackstone's distinction between Civil and Criminal wrongs; Jus Publicum and Jus Privatum; Public and Pri-

vate wrongs defined; Sources of English Law; Courts of Law classified.

2. "*The Courts of Parliament and Privy Council* ; Objects of Impeachment; Commencement of Impeachment; Trials of Impeachment; Court of the Lord High Steward; Court of the House of Lords; Appeal to the House of Lords; Appeal to the Judicial Committee of the Privy Council.

3. "*The Court of Chancery* ; Real and Personal Property; Equitable Interests; Nature of Trusts; Implied Trusts; Cases of Equitable Jurisdiction; Bills in Chancery; Evidence in Chancery; Statutory Jurisdiction of Chancery; Office of the Lord Chancellor; Court of Appeal in Chancery; Master of the Rolls; the Vice-Chancellors.

4. "*The Superior Courts of Common Law* ; Judges of Common Law; Courts of Westminster; Court of Queen's Bench; Courts of Common Pleas and Exchequer; Exchequer Chamber; Appeal in Criminal Cases.

5. "*Trial of Actions at Law* ; Pleadings; Declaration; Plea and Issue; Trial without Pleadings; Payment into Court.

6. "*Writs issued Judicially* ; Habeas Corpus; Suspension of Habeas Corpus; Mandamus; Prohibition; Quo Warranto; Certiorari.

7. "*Criminal Trials at Common Law* ; Arrest and Committal; Grand Juries; Indictment and Information; Arraignment; Judgment, Reprieve, and Pardon.

8. "*Trial by Jury* ; Constitution of Juries; Challenge; Special Juries; Evidence; Summing-up—Verdict; New Trial; Value of Trial by Jury; Excellence of the English Judicial System.

9. "*Courts of Local Jurisdiction* ; Assizes; Nisi Prius; Central Criminal Court; Justices of the Peace; Quarter Sessions; Criminal Procedure in General Sessions; Petty Sessions; Summary Conviction; Borough Sessions; County Courts; Court of Insolvent Debtors; Court of Bankruptcy; Ecclesiastical Courts; Civil Law; Provincial and Diocesan Courts; Ecclesiastical Jurisdiction; Probate of Wills; Ecclesiastical Procedure; Admiralty Court; Prize Court; Coroners; Irish Courts; Scotch Courts."

The subjects of *Administrative Government* are thus arranged:—1. The Royal Prerogative. 2. Parliament, the Privy Council, and its Committees. 3. The Secretaries of State. 4. The Fiscal Administrative Offices. 5. The Military and Naval Offices. 6. Boards instituted by Act of Parliament. 7. Local Administrative Government.

A long chapter is then devoted to *International Government*, and another to *Colonial Government*.

The Author contends, that a representative assembly ought not to possess judicial powers, and under this head he treats of the objectionable mode of passing *private*

**Bills.** There are very few disinterested persons who will not agree in the following statement and observations :—

“The enormous number of Bills, relating to the construction and management of railways and other works, engages so large a part of the labours of the House of Commons, that comparatively little time and strength are left for the discharge of its more general duties. If the question be asked, how it comes to pass that year after year measures of the most apparent utility are postponed, the explanation seems to depend, in a great measure, on the fact, that the House of Commons is overwhelmed with business, extra-legislative, that measures within its proper province cannot obtain a due share of its attention.

“It is an ungracious observation, but one which the due consideration of the subject requires, that improper influences operate on the passing of private bills, and that the results of legislation, especially with regard to public companies, are regarded with very general dissatisfaction. It is, I believe, undeniable that the practice is common of *canvassing* for the votes of members of the House of Commons, on many occasions where private interests are affected. A practice more subversive of the integrity and efficiency of the legislature—more detrimental to its dignity—more destructive of the national respect and confidence which it ought to possess, can hardly be conceived. Members of Parliament, happily, are rarely charged in modern times with receiving bribes, and no such case of direct pecuniary corruption has been publicly known for many years. But, on the other hand, it is almost certain that private persuasion and the operation of arguments, urged not in the assembly but in the closet, affect the divisions of the House, where large vested interests are concerned. The dealings of public companies with their rivals are believed to be very much influenced by estimates of the number of parliamentary votes, which they are severally able to secure by the means in question. Even Courts of Law have recognised contracts between railway companies and landed proprietors, in which “parliamentary influence” was the principal consideration.

“Incidental to the prevailing methods of carrying contested private Bills through Parliament are enormous pecuniary expenses which contribute to render the tolls and rates authorised by those Bills either exorbitant or unremunerative, or both.

“The canvassing for parliamentary votes is not confined to persons interested in public works and monopolies. The practice is adopted, also, in aid of efforts to remove taxes affecting powerful classes, and on similar occasions. For these cases it is not easy to devise a complete remedy. In the present state of financial science a general system of taxation could not be prescribed which would relieve Parliament of the necessity of investigating separately the shares which different bodies of

the community ought to contribute. But with respect to the power usually given to railway and similar companies, it is quite conceivable that general laws might be devised, of which the application to the individual cases might be left advantageously to a branch of the Executive. The application of certain general Acts is already thus intrusted with advantage to Government Boards, subject to parliamentary revision and control; and the small number and responsibility of the persons who constitute such boards render them, when acting in a strictly judicial capacity, as inaccessible to private importunity as the Judges themselves.

“In order to prevent surprise of persons affected by private Bills for the execution of railways, and other purposes, the Standing Orders require the issue of notices of the intention to apply for the enactment of such Bills. The Standing Orders require, further, in order to check undue speculation, a deposit of a portion of the money requisite for carrying out intended works; and the first step towards passing such Bills is to ascertain that the Standing Orders with respect to them have been complied with. The Bills are then usually referred to select parliamentary committees. Formerly the number of members on these committees was too great to allow due responsibility to be attached to the members. The practice of canvassing them for their votes prevailed very extensively, and it frequently occurred that at the conclusion of an elaborate and expensive inquiry, members who had taken no part in it—who had heard neither evidence nor arguments as to the merits of the Bill—crowded into the committee-room, and by their votes entirely neutralized the effect of the preliminary investigations. The practice, however, with respect to committees on private Bills is now amended. The method of appointing the committees is entirely altered, the number of each being reduced generally to five members in railway Bills, and the members being chosen by a general committee of selection in such a manner as to secure, as far as possible, freedom from local influences. Before the select committee on each opposed private Bill, a severe examination takes place, in which counsel may be employed, and minute evidence of engineers and other witnesses taken. The decision of the committee as to the merits and nature of a private Bill is reported to the House. An adverse decision of the committee is generally fatal to the further progress of the Bill; Parliament, however, by no means delegates to the committee the absolute power of rejecting or authorising the proposed measure.

“The modern method of dealing with private Bills is, doubtless, a great improvement on that which formerly existed. But the expense, the strife and intrigues which attend the investigation of opposed railway Bills, and the enormous price at which lands required by them are purchased from the proprietors, whose parliamentary opposition is feared, are clear evidences that the system is still unsatisfactory.”

From the *judicial* department of the work, it may be useful to extract Mr. Cox's remarks on *Equitable Jurisdiction*, a subject now peculiarly under the consideration, both of the Public and the Profession.

"Perhaps the simplest view of the general distinctions between the functions of a Court of Equity and a Court of Common Law, may be derived from the consideration that the latter pronounce judgment for the plaintiff or defendant *simply*, whereas a Court of Equity *arranges* the differences of litigating parties. A Bill praying for relief in Equity, after specifying the special relief which the plaintiffs require, prays also for such further or other relief as to the Court may seem fit.

"The distinctions between the functions of the Courts may be further illustrated, by consideration of the different natures of the machinery (so to speak), by which they severally act. The most usual form of 'pleading' in Equity is by *Bill and Answer*. The 'bill,' which is now printed, sets forth the nature of the plaintiff's case, and is required to contain, as concisely as may be, a narrative of the material facts, matters, and circumstances, on which the plaintiff relies. On the principle of *doing complete justice*, which is said to be the peculiar office of Courts of Equity, all the persons who have interests in the suit are usually necessary parties to it; but by the Act to amend the practice and procedure in Chancery, 15 & 16 Vict. c. 86, it is lawful for the Court to adjudicate on questions arising between parties, notwithstanding that they may be some only of the parties interested in the property respecting which the question may have arisen.

"The next proceeding, if an answer to the bill be required, is to deliver to the defendant *interrogatories* or questions concerning the matters of complaint. Unless the defendant can show sufficient reason (by plea, demurrer, or disclaimer) for not answering, he will be required to answer all the interrogatories addressed to him, and his answers may contain statements material to his own case. In a suit commenced by claim or bill, which the defendant is required to answer, he may, after having sufficiently answered, file interrogatories which the plaintiff may be required to answer. Answers must generally be put in upon oath.<sup>1</sup>

"Where a bill is for discovery only, and in some other cases, a sufficient answer by the defendant puts an end to the suit. Where, however, a decree of the Court is necessary, the cause must come on to be heard upon the evidence. If the Court or any of the parties to the bill require it, evidence must be taken orally. Depositions upon oral examination before the Examiners of the Court are to be

taken down in writing and read over to the witness, who signs them in the presence of the parties attending. In addition to or in lieu of oral evidence, written affidavits by particular witnesses, or as to particular facts, may be used in the hearing of the cause. An affidavit is a statement in writing made without official examination, and verified by the oath and signature of the person making it. It has been said that 'an affidavit does not blush,' and certainly grave objections may be often alleged against testimony given, not orally, but in writing. By such testimony, though it has frequently the advantages of convenience and economy, truth is, in some cases, far less effectually elicited than by oral examination. Affidavits and answers frequently embrace statements so complicated and technical, that even a conscientious person is made by them to give false testimony.

"On the hearing of a cause the testimony is usually read from answers, affidavits, and depositions, but occasionally witnesses are examined orally in the Court, which usually determines questions both of fact and law. Where, however, the former appear doubtful on the evidence, the Court will, for its own information, direct an issue to determine particular facts to be tried at Common Law.

"The *statutory jurisdiction* of the Court of Chancery is that derived from Acts of Parliament. Thus the Court has a power of directing the 'winding-up' the affairs of joint-stock companies, unable to meet their pecuniary engagements. The Court of Chancery has also a jurisdiction by statute with respect to the appointment of trustees where trusteeships would otherwise remain vacant; and the moneys, stocks, and securities of trusts may, upon application of a majority of the trustees or executors, be ordered to be paid or transferred to the Court of Chancery, which makes orders on petition (without bill) for the application of the property so paid or transferred. The Court of Chancery has also statutory powers with respect to the investment of the purchase-money where lands in settlement or to which the title is defective are purchased for the purposes of railways, canals, &c.,—the taxation of solicitors' bills, &c. In other cases the protecting and controlling equitable powers of the Court are extended by Statutes.

"The *delegated jurisdiction* of the Court of Chancery is that which concerns the administration of the estates of idiots and lunatics. This power of administration is conferred by a warrant under the Royal sign manual, directed to some great officer of state—usually the Lord Chancellor, in consideration of its being his duty to issue commissions of lunacy and idiotcy.

"The *Common Law jurisdiction* of the Court of Chancery relates chiefly to the nomination, &c., of its own officers, pleas to repeal letters patent, the issuing of certain writs, and other matters which are too technical to require notice here. Among the writs issued by the Court of Chancery are *original writs*, writs of

<sup>1</sup> Answers in Equity combine the characters of evidence and pleading. The Common Law process has the advantage of keeping pleading and evidence separate."



peerages, writs for elections of members of the House of Commons, issued by a Royal command for a general election; by the House itself for supply of vacancies."

It must be fairly acknowledged that the Author has satisfactorily proved, — particularly in reference to the principles and administration of Government, and much of the procedure in Parliament, — that a new Treatise was required on many of the topics comprised in his volume, and which he has reviewed with learning and ability, and discussed freely yet discreetly.

### BUSINESS OF THE COURT OF CHANCERY.

WHEREAS from the present state of the business before the Lord Chancellor and the Master of the Rolls respectively, it is expedient that a portion of the Causes and Claims set down before the said Lord Chancellor to be heard before the Vice-Chancellor Sir William Page Wood, should be transferred to the Master of the Rolls' Book of Causes for Hearing. Now I do hereby order that the several Causes and Claims set forth in the Schedule hereunto subjoined, be accordingly transferred from the Book of Causes of the Vice-Chancellor Sir William Page Wood to that of the Master of the Rolls. And I do further order, that all Causes and Claims so to be transferred (although the Bills in such Causes and the Claims may have been marked for the Vice-Chancellor Sir William Page Wood, under the Orders of the Court of the 5th May, 1837, and notwithstanding any orders therein made by the Vice-Chancellor Sir William Page Wood, or his predecessors), shall hereafter be considered and taken as Causes and Claims originally marked for the Master of the Rolls, and be subject to the same regulations as all Causes and Claims marked for the Master of the Rolls, are subject to by the same Orders; provided, nevertheless, that no Order made by the Vice-Chancellor Sir William Page Wood or his predecessors in any such Causes or Claims shall be varied or reversed otherwise than by the Lord Chancellor or the Lords Justices. And this order is to be drawn up by the Registrar and set up in the several offices of this Court.

(Signed) CRANWORTH, C.

#### SCHEDULE.

From Vice-Chancellor Wood's Cause Book.

Yarington v. Barker, motion for decree.

Waugh v. Waddell, cause.

The Attorney-General v. Queen Elisabeth's College, cause.

Partridge v. Ives, motion for decree.

Williams v. Williams, claim.

Lady Glamis v. Cumberland, cause.

Symes v. Magnay, motion for decree.

Watson v. Cleaver, motion for decree.

Warick v. Richards, cause.

Wilkes v. Swann, claim.

Desborough v. Harris, cause.

Wynne v. Ogilvie, motion for decree.

Phipps v. Kelson, claim.

Pilkington v. Belton, motion for decree.

Jebb v. Tugwell, motion for decree.

Elam v. Stead, motion for decree.

Brady v. Morgan, motion for decree.

Beere v. Beere, cause.

Turnley v. Biron, motion for decree.

Maddock v. Aked, motion for decree.

Robinson v. Anderson, cause.

Poole v. Poole, motion for decree.

Penfold v. Crossland, claim.

Shaw v. Neale, cause.

Harford v. Lloyd, cause.

Child v. Child, cause.

Jefferies v. Michell, cause.

Bell v. Whitbourne, motion for decree.

Austin v. Rickwood, claim.

Hollinsworth v. Woodhead, cause.

Pullen v. Fairthorne, motion for decree.

Rogers v. Rogers, cause.

Caledonian Railway Co. v. Woodrow, cause.

Thorp v. Thorp, cause.

Arkell v. Henly, cause.

Henly v. Henly, cause.

Capell v. Hyatt, motion for decree.

Davies v. Hallett, motion for decree.

Benaley v. Riches, motion for decree.

Collinson v. Lister, cause.

(Signed) CRANWORTH, C.

### LAW OF ATTORNEYS.

#### AFFIDAVIT OF INCREASE.—PAYMENT OF WITNESSES.

ON this motion for a rule *nisi*, on an attorney, to refund to the lessor of the plaintiff in this action of ejectment, the moneys appearing to have been overpaid, it appeared that the attorney had made an affidavit of increase, on the taxation of the defendant's costs in July, 1849, and that on the plaintiff reading the decision of the Court of Queen's Bench, *In re Flewker* (June 9, 1851), had been induced to look into the matters of the affidavit. He thereupon found that the affidavit was incorrect in various particulars, *inter alia*, it mentioned certain maps or plans as made by three of the witnesses, and produced at the trial, whereas no map or plan made by either of them was produced, and two of the witnesses were not called, and the third pro-

duced no map, and also, that a witness for whose attendance three guineas was charged, merely put in a counterpart of a lease, which was not used or required, and that another witness, to whom the attorney in his affidavit stated five guineas to have been paid, had been paid only 15s. at the time it was sworn, the rest not having been paid until some months afterwards.

Lord Campbell said.—“I adhere to the opinions which I stated *In re Flewker*, 17 Q. B. 572, *π*. It is a culpable practice for an attorney to state that he has made payments, which, in fact, he has not made, or to increase charges unduly, whether for the

purpose of benefiting himself as the attorney, obtaining popularity with others, or oppressing the adverse party: and I will eagerly receive any information which may disclose such practices to this Court. But in the present case, I think, it would not be reasonable to call upon an attorney, after so long a time as has elapsed, to go into the minutiae of such charges as are made on the present application. It would require a very strong case to induce the Court to do this; and I think there is not such a case now before us. Therefore there will be no rule." *Doe d. Mence v. Hadley*, 17 Q. B. 571.

## COMMON LAW FEES AND DISBURSEMENTS,

EXTRACTED FROM PARLIAMENTARY RETURN OF 28TH APRIL, 1854.

### *Fees and Disbursements in Masters' Offices.*

**QUEEN'S BENCH.**

|                    | £      | s. | d. | Surplus.        |
|--------------------|--------|----|----|-----------------|
|                    |        |    |    | £ s. d.         |
| Received . . . . . | 18,442 | 13 | 4  |                 |
| Paid . . . . .     | 13,535 | 10 | 2  |                 |
|                    |        |    |    | <hr/> 4,907 3 2 |

### COMMON PLEAS.

|   |        |    |   |
|---|--------|----|---|
| <b>Received</b>   | 10,510 | 11 | 9 |
| <b>Paid (including 1,075<i>l.</i> 11<i>s.</i> 4<i>d.</i> pensions and compensations)*</b> | 11,194 | 0  | 3 |

**Deficiency . . . . £ 683 8 6**

**EXCHEQUER OF PLEAS.**

|   |        |        |       |
|---|--------|--------|-------|
| Received . . . . .  | 21,813 | 13     | 8     |
| Paid (including 1,193l. 6s. 10d. pensions and compensations)* | 14,370 | 14     | 6     |
|   |        | 7,442  | 19 2  |
|   |        | 12,350 | 2 4   |
| Deduct deficiency in the Common Pleas . . . . .               |        | 683    | 8 6   |
|   |        | 11,666 | 13 10 |
|   |        | 3,068  | 18 2  |

\* If these two amounts of payment for pensions and compensations were paid out of the Consolidated Fund, the surplus would be increased to . 14,735 12 0

***Amount received at the Masters' Offices for swearing Affidavits.***

|                      |   |   |   |   |   |   |             |           |          |
|----------------------|---|---|---|---|---|---|-------------|-----------|----------|
| <b>Queen's Bench</b> | . | . | . | . | . | . | <b>£ 99</b> | <b>1</b>  | <b>0</b> |
| <b>Common Pleas</b>  | . | . | . | . | . | . | <b>132</b>  | <b>8</b>  | <b>0</b> |
| <b>Exchequer</b>     | . | . | . | . | . | . | <b>192</b>  | <b>10</b> | <b>0</b> |
|                      |   |   |   |   |   |   | <b>£424</b> | <b>3</b>  | <b>0</b> |

The Receipt for Oaths at the *Judges' Chambers* have at present been returned only from the Common Pleas. Those other returns will increase the surplus.

This large surplus, we trust, will enable the Judges to abolish altogether the small fees on filing notices, affidavits, &c., and to reduce many of the fees in the early stages of an action, and thus diminish the burthens on the suitors in the Superior Courts.

## LAW OF COSTS.

## WHERE PEREMPTORY MANDAMUS ON RAILWAY COMPANY TO CARRY ROAD OVER LINE.

A PEREMPTORY mandamus was awarded by the Court of Queen's Bench, commanding a railway company, whose line crossed a public highway, to carry the road over the railway by means of a bridge, but without showing on the face of it that it was impossible for the company to exercise the option given by the 8 & 9 Vict. c. 20, s. 46, of carrying the railway over the road, and it directed that the prosecutor should recover his damages, costs, and charges and costs of increase. The Court of Exchequer Chamber reversed this judgment. On an appeal to the House of Lords, affirming the decision of the Court of Error, *Parke, B.*, who delivered the judgment of the Judges, said, in respect of the costs:—"These costs are not the costs awarded at the discretion of the Court, under 1 Wm. 4, c. 21, s. 6, as the costs of the application for a writ of mandamus, but the general costs of the cause to which the prosecutor would be entitled under section 4, extending 9 Anne, c. 21, to every sort of mandamus.

"By the 2nd section of that Statute, the prosecutor, in case he obtains a verdict, shall recover his damages and costs, in such a manner as he might have done in an action on the case for a false return of a mandamus. In such an action, if the mandamus had been on the face of it invalid, and the defect had appeared on the record, the plaintiff could not have recovered any damages, for if the writ gave him no right, the foundation of the action would have failed, as there would have been no obstruction to a right." *Regina v. South Eastern Railway Company*, 4 House of Lords' Cas. 471.

## LIVERPOOL LAW SOCIETY.

## ANNUAL REPORT OF THE COMMITTEE.

THE Committee have to report that since the last Annual Meeting, two new members have been admitted: namely, Mr. *John Forshaw* and Mr. *Joseph James Ridley*, and that three members, Mr. *Davenport*, Mr. *Wybergh*, and Mr. *Henry Fisher* have retired.

The Society now consists of 117 members.

The Committee have, during the past year, devoted considerable time and attention to questions affecting the welfare of the Profession, which have, from time to time, been brought before them; and to the various Bills brought into Parliament, containing proposed

alterations of Law and Practice, and connected with the administration of justice.

The Committee may refer amongst others to the South Sea Company's Arrangements and Trusts Bill, which had for its principal object the administration and management of private trusts by a public company. The provisions of the Bill appeared to a Committee to be so inconsistent with the principles of Equity, and to be otherwise so objectionable, that they thought it their duty to present a petition against it; in doing so they had the satisfaction of acting in conjunction with the Council of the Incorporated Law Society, and other legal associations, and in consequence of the strong opposition manifested, the Bill was withdrawn.

The Committee may also refer to the Bill called the "Testamentary Jurisdiction Bill," introduced during the last Session into the House of Lords, by which the administration of the estates of testators and intestates would have been removed from the Ecclesiastical Courts into the Court of Chancery. This Bill would probably have received more general support had it created a new Court of Equity for the administration of this extensive and important branch of legal business; but even as brought into the House it was well worthy of support, inasmuch as it would have simplified proceedings and established one Court for the proof of wills, and the granting of administrations, and have removed the uncertainty as to jurisdiction, which at present exists. To the objection made in several quarters that the Court of Chancery has already more business than it can satisfactorily dispose of, it was sufficient to answer that nothing can be worse, more oppressive, and vexatious than the present system, and that some improvement may be reasonably expected in the proposed change, although not equal to that which a separate Court might afford. The Bill, however, appeared to meet with support among nearly all classes of the community; but it is understood, that owing to the difficulty of arranging questions of compensation with persons interested in the existing system, and of threatened opposition in several influential quarters, the Bill was withdrawn. There is reasonable ground for believing that it will be again brought forward in a future Session, when it will be advisable to take some measures for calling the attention of the community to the Bill, as its provisions commend themselves to the approval not only of the Profession, but of the public at large.

The Committee have also had under their consideration the amendment of the practice of the District Court of Bankruptcy, and have recorded their opinion on that subject, in answer to certain printed questions circulated by the Queen's Commissioners, which answers have since been published.

The Committee have also had the painful duty of investigating a case of alleged professional misconduct on the part of a solicitor (not a member of this Society), which, at the

time, attracted the notice not only of the Profession, but of the public. After ascertaining, by the aid of a Sub-committee, the facts of the case, they deemed it incumbent upon them to report them to the Council of the Incorporated Law Society, in order that the Court of Queen's Bench might be moved for a rule to show cause, and accordingly they prepared and submitted to the Council drafts of affidavits stating the circumstances. The Council, however, were advised that the motion could not succeed without further evidence, which another person, implicated in the transaction, could alone furnish; and it not being possible to carry the evidence further, the matter was reluctantly dropped. The Committee feel that they owe this explanation to the Society, as many comments have been made upon their supposed desire to avoid this painful duty.

The Committee do not consider it necessary to particularise their labours with respect to Bills which have become law during the last Session; but they may observe generally, that several very judicious amendments have been made in the Common Law Procedure Act, in the Bankruptcy Practice, and in other parts of the Statute Law.

The Committee have much pleasure in observing that the alterations in the mode of Procedure in the Chancery Court of Lancashire, have caused a considerable increase in the business of the Court, and that in consequence of a recent reduction in the scale of fees, the expense of proceedings has been considerably decreased. The Court now possesses great advantages for local suitors, and is convenient for solicitors practising in the district. The public and the Profession are much indebted to the Vice-Chancellor, and to the District Registrar, for having so greatly promoted and extended the efficiency of the Court.

The Committee regret that since their last Annual Report nothing has been done towards the establishment of a system of authorised

examination into the general education of persons desiring to become articulated clerks, and certificates of fitness as a necessary qualification to their entering into articles, or towards improving the existing system of examination before admission as attorneys and solicitors. The more the Committee consider this subject the more they are convinced that the future status and welfare of the Profession will, in a great measure, depend upon a higher standard of education.

Your Committee have to report that during the past year they have, from time to time, received from the Committee of the Metropolitan and Provincial Law Association, many important communications relating to the several Bills introduced into Parliament during the past Session, and other subjects affecting the interests of the Profession, and the various proposed amendments and alterations in the law, and wish to express the high sense they entertain of the value of that Association.

It having been arranged that a meeting of its members should take place at Leeds on the 18th ult., your Committee thought it right to appoint a deputation to attend such meeting as delegates from your Society, and accordingly requested Mr. *Payne* and Mr. *H. H. Statham* to undertake the office, which they have done; and from their report of the proceedings your Committee are of opinion that the meeting (which was attended by delegates from various other law societies), was well calculated not only to forward the interests of the professional body of attorneys in the right direction; but also to place them in a better position for assisting to carry out such truly beneficial improvements in the law as will benefit the community at large.

The accounts of the treasurer show a balance 112*l.* 17*s.* 10*d.* to the credit of the Society.

The members of the Committee who go out in rotation are, Mr. *H. H. Statham*, Mr. *Carter*, Mr. *Waring*, Mr. *J. Fletcher*, and Mr. *Collins*.

## CANDIDATES WHO PASSED THE EXAMINATION.

*Michaelmas Term, 1854.*

| <i>Names of Candidates.</i>          | <i>To whom Articled, Assigned, &amp;c.</i> |
|--------------------------------------|--|
| Armstrong, James . . . . .           | William Chater                             |
| Baldwin, Robert Bulkeley . . . . .   | William Charnley                           |
| Bennett, James . . . . .             | Richard Prall                              |
| Bayley, John Tandy . . . . .         | William Owen Tucker; Wm. Owen John Tucker  |
| Bishop, Mortimer Samuel . . . . .    | William Richard Bishop                     |
| Bridger, William . . . . .           | Bartle John Laurie Frere                   |
| Bugg, Isaac . . . . .                | Henry Blake Miller                         |
| Cayley, George . . . . .             | Charles Lever                              |
| Cheate, George . . . . .             | Gustavus Thomas Taylor                     |
| Chorley, Thomas Fearncombe . . . . . | Frederick Alfred Trenchard                 |
| Cobb, William Henry . . . . .        | Henry Richardson                           |
| Cousins, Thomas jun. . . . .         | John Cosens Parnell                        |
| Drabwell, John . . . . .             | James Campey Laycock                       |
| Druce, Henry . . . . .               | William Adams; William Morris              |
| Edwards, Charles Hugh . . . . .      | Thomas Eyre Lee; Charles Best              |
| Elgood, William . . . . .            | John Henry Hearn                           |
| Emmet, Charles . . . . .             | Thomas Adam                                |
| Falcon, Michael . . . . .            | William Wybergh How; Charles Falcon        |

| <i>Names of Candidates.</i>     | <i>To whom Articled, Assigned, &amp;c.</i>   |
|---------------------------------|--|
| Farnfield, William              | George Fry                                   |
| Farrant, Robert                 | John Geare                                   |
| Fisher, George Pemberton        | Thomas Fisher                                |
| Fisher, Thomas                  | Edward Fisher; Frederick John Wood           |
| Fletcher, Thomas Arthur         | John Fletcher                                |
| Fox, Thomas                     | Edward Elwin                                 |
| French, Beal Frederick          | George Marten                                |
| Gamble, George, jun.            | Thomas Houghton Hodgson                      |
| Gardner, Richard                | Benjamin William Aplin; Henry Parker, jun.   |
| Greatback, Frederick Daniel     | Jabez Tepper                                 |
| Grimshaw, John, jun.            | Henry Waddington Hartley                     |
| Groom, Alfred                   | George Powell                                |
| Hackwood, William               | John Linklater                               |
| Hall, Henry                     | Lugh Richmond                                |
| Hansell, Peter Edward           | Henry Hansell                                |
| Harvey, Thomas Kingdon          | Joseph Roberts                               |
| Hellins, William                | Robert Falford                               |
| Hewitt, Robert Henry            | Robert Hewitt; Sir William Foster, Bart.     |
| Hill, John Edwards              | George Edwards                               |
| Hill, William James, jun.       | John Garland                                 |
| Hirtzel, George                 | John Daw; James Sminke Kingdon               |
| Hitchings, Richard Nevill       | John James                                   |
| Hole, Charles Marshall          | Charles Henry Rhodes                         |
| Hughes, Charles Leadbitter      | Philip Richard Falkner                       |
| Hurry, Henry                    | Robert Jackson                               |
| Irvine, Alexander Lodwick, jun. | John Atkins                                  |
| Jackson, Henry                  | William Henry Duignan                        |
| James, George Frederick         | George Paulson Wragge; Alfred Burton Cowdell |
| John, William                   | Thomas Morgan                                |
| Joslen, Arthur                  | Knowles King                                 |
| Karslake, Henry John            | Henry Karslake                               |
| Kinneir, Henry                  | Frederic Every; William Kingdon              |
| Koe, Ralph Pemberton            | John Hardcastle Mousley; Francis Mewburn     |
| Lee, Frederick                  | Thomas Parker                                |
| Legg, Alfred                    | George William Cram                          |
| Letchworth, Edward              | Edward Vines                                 |
| Lever, Charles Baldwin          | Charles Lever                                |
| Lewis, Charles Carne, jun.      | Charles Carne Lewis, sen.                    |
| Lloyd, Henry                    | Frederick Bowker                             |
| Lomer, Walter Abraham           | David Simpson Morrice; James Bradby          |
| Lush, Frederick Matthew         | John Henry Todd                              |
| Lynch, George Sanderson         | Henry Andrews Palmer                         |
| M'Gowen, William Thomas         | Williams and Macleod; William Shuttleworth   |
| Marchmont, John, jun.           | John Lyon Foster                             |
| Marshall, Henry, jun.           | Henry Marshall                               |
| Martin, Charles                 | Humphrey Wickham; George Bayland             |
| Müller, Walter Moore            | Henry Miller                                 |
| Moore, George Townsend          | Edward Scott                                 |
| Morris, James Shippard          | George Kewney                                |
| Mossop, Charles                 | Charles Hanslip; John Stuart; Robert Mossop  |
| Mounsey, John Giles             | George Gill Mounsey                          |
| Oliver, George James            | Herbert Lloyd                                |
| Olivier, Alfred                 | Francis Ridout Ward; Arthur John Knepp       |
| Osborne, Alfred                 | John Brittlebank; George Goodwin Brinlebank  |
| Parrott, Thomas                 | John Porrott                                 |
| Paull, Henry                    | Frederick Alfred Trenchard                   |
| Pemberton, Loftus Leigh         | Edward Leigh Pemberton                       |
| Perrin, Jonathan                | William Rees Mogg                            |
| Perry, George                   | Rowland Price                                |
| Plaskitt, Joseph                | Christopher Ingoldby, jun.                   |
| Player, Joseph Norton           | Charles Nicholas Cole                        |
| Potter, Henry                   | Thomas Acres Curtis                          |
| Powell, William Henry           | John Powell                                  |
| Prichard, Charles John Collins  | James Flower Fussell                         |
| Remington, George               | Henry Remington                              |
| Richards, George Charles        | John Holyoake                                |
| Robinson, Edward                | David Russell                                |
| Roskams, Henry                  | Thomas Leadbitter; William King              |
| Salt, William                   | George Moultrie Salt                         |
| Sanders, Francis                | William John Beale                           |
| Sansom, Samuel                  | James Burton                                 |
| Scholes, Charles Robert, jun.   | Charles Robert Scholes, sen.; Martin Kidd    |
| Sharpe, Edward                  | William Sharp                                |

| <i>Names of Candidates.</i>  | <i>To whom Articled, Assigned, &amp;c.</i>     |
|--|--|
| Sheppard, Henry Richard . . . . .                                  | Richard Sheppard                               |
| Shew, William Harford . . . . .                                    | Samuel Moores                                  |
| Shirreff, William Moore . . . . .                                  | Charles Ireland Shirreff                       |
| Smith, William . . . . .   | Edward Hoar                                    |
| Snow, Henry, . . . . .   | Maurice Peter Moore                            |
| Sears, Benjamin . . . . .  | Samuel Carter                                  |
| Stead, Richard William . . . . .                                   | Thomas Percival Bunting                        |
| Stephens, Thomas Henry . . . . .                                   | John Cribb Stephens                            |
| Stone, George William . . . . .                                    | George Tamplin                                 |
| Tee, James . . . . .   | George Asbley                                  |
| Thompson, Charles Robert . . . . .                                 | Wilson Perry; William Henry Ashurst            |
| Thompson, James, jun. . . . .                                      | Henry Nelson; Albert Turner                    |
| Tocque, George Richard Fletcher Howes . . . . .                    | Charles Leake; John Whickham Flower            |
| Tombs, Henry Coggan . . . . .                                      | Samuel Tombs, jun.                             |
| Trevenen, William . . . . .  | Park Nelson                                    |
| Underhill, James Edward . . . . .                                  | Henry Underhill                                |
| Walker, George . . . . .   | Jacob Birt                                     |
| Watts, Henry Sherland . . . . .                                    | Henry Marsh Watts                              |
| Webster, John . . . . .  | John Musgrave                                  |
| Whatman, Charles Mann Cornwallis . . . . .                         | John Jackson Blandy                            |
| Williams, Geo. St. Swithin, articulated as Geo. Williams . . . . . | George Frederick Druce; Edwd. Brodrigg Randall |
| Wooldridge, Charles . . . . .                                      | Charles John Tyles                             |
| Wyatt, Joseph . . . . .  | George Atkinson                                |
| York, James Neal . . . . .   | Charles Ford                                   |

## PROFESSIONAL LISTS.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 24th October to 17th Nov., 1854, both inclusive, with dates when gazetted.*

Bannister, Charles George, and Edward Bannister, 13, John Street, Bedford Row, Solicitors. Nov. 3.

Browne, Titus, Henry Titus Browne, Aford and Spilsby, Attorneys, Solicitors, and Bankers. Nov. 3.

Godden, John, and Henry James Godden, 6, Gray's Inn Place, Gray's Inn, Attorneys and Solicitors. Oct. 31.

Hastings, William Warren, William Best, and Thomas Henry Smith, 3, Southampton Street, Bloomsbury Square, Attorneys, and Solicitors (so far as regards the said William Best). Oct. 31.

Keddell, Frederick, and Charles Smith, 34, Lime Street, City, Attorneys and Solicitors, Oct. 31.

## PERPETUAL COMMISSIONER.

*Appointed under the Fines and Recoveries' Act, with date when gazetted.*

Rushton, Thomas, Uttoxeter, in and for the county of Stafford. Nov. 17.

## NOTES OF THE WEEK.

## IRISH INCUMBERED ESTATES COMMISSION.

THE Queen has been pleased to direct Letters Patent to be passed under the Great Seal, appointing the Right Hon. *Maziere Brady*, Chancellor of that part of the United Kingdom of Great Britain and Ireland called Ireland; the Right Hon. Sir *John Romilly*, Knight, Master of the Rolls, in that part of the said United Kingdom called England; the Right Hon.

*James Henry Monahan*, Chief Justice of the Court of Common Pleas in that part of the United Kingdom called Ireland; the Right Hon. *Francis Blackburn*, the Right Hon. *Abraham Brewster*, Attorney-General for that part of the said United Kingdom called Ireland; Sir *Richard Bethell*, Knight, Solicitor-General for that part of the United Kingdom called England; *Mountfort Longfield*, LL.D., one of her Majesty's Counsel, *John David Fitzgerald*, Esq., one of her Majesty's Council, and *Hugh McCalmont Cairns*, Esq., Barrister-at-Law, to be her Majesty's Commissioners for inquiring into the state of the business of the Court of Commissioners for the Sale of Incumbered Estates in Ireland.—From the *London Gazette* of 17th November.

## WINTER ASSIZES.

Days and places appointed for holding the Special Commissions of Oyer and Terminer and Gaol Delivery for the county and city of York.

*County of York*.—Saturday, 2nd December, at the Castle of York.

*City of York*.—The same day, at the Guildhall of the said city.

## NORTHAMPTON BOROUGH COURT.

It is this day (14th November), ordered by her Majesty in Council that, within one month after such order shall have been published in the *London Gazette*, all the provisions of the Common Law Procedure Act, 1854, and the rules made and to be made in pursuance thereof shall apply to the Court of Record of the Borough of Northampton.—From the *London Gazette* of Nov. 17.

## SOLICITORS ELECTED AS MAYORS.

*Lancaster*, John Brockbank.

*Bury St. Edmunds*, W. Salmon.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lord Chancellor.

*Schroder v. Schroder.* Nov. 18, 1854.

WILL AND CODICIL. — CONSTRUCTION. — ELECTION OF HEIR AS TO AFTER-ACQUIRED ESTATE.

*A testator, by will, dated in 1825, devised all the real estates of which he then was, or at the time of his death should be seised or entitled (upon the determination of the life estate of his wife therein by marriage or death) to his children as tenants in common. He afterwards acquired and contracted to purchase real estates, and by his codicil he directed his trustees to complete the purchase and to hold on the trusts of the will, but he subsequently took a conveyance to uses to bar dower: Held, that the latter estate passed to the heir, who was put to his election.*

THIS was an appeal from the decision of Vice Chancellor Wood (reported 1 Kay, 578). It appeared that the testator, by his will, dated July 8, 1825, devised all his real estates whatsoever and wheresoever, of or to which he then was, or at the time of his decease should be, seised or entitled, for an estate of freehold and inheritance, or of freehold only, or of or to which any person or persons in trust for him then was or were, or at the time of his decease should be, seised or entitled for an estate of freehold and inheritance or of freehold only, or which he then had or should thereafter have power to dispose of or appoint by will, to trustees to the use of his wife for life, if she should so long remain his widow, or otherwise until her second marriage, then as to one moiety to her separate use for life, and after her death to the use of all his children living at the time of his decease as tenants in common. The testator afterwards purchased a freehold estate at Clapham, and which was conveyed to him in October, 1827, and in the following November he contracted for the purchase of other freehold premises at Stockwell Common, but before they were conveyed he added a codicil to his will, whereby, after reciting the purchase of the estate at Clapham and the contract for the purchase of the freehold at Stockwell, he directed his trustees to complete the purchase out of his personal estate, and to hold the same upon the trusts of the will. The estate at Stockwell was, in the December ensuing, conveyed to the testator to uses to bar dower, and on September 29, 1832, he died, leaving four sons, the youngest of whom attained his majority in September, 1851. The testator's widow married in February, 1835. The Vice-Chancellor having put the heir to his election, on the ground of the devise of the Stockwell property by the codicil being revoked by the subsequent conveyance, this appeal was presented.

*Rolt and A. Smith* in support; *Malins* and *W. H. Terrell*, contra.

The Lord Chancellor dismissed the appeal with costs.

## Vice-Chancellor Kindersley.

*Begwill v. Rose.* Nov. 20, 1854.

WILL. — CONSTRUCTION. — REFERENCE OF DEATH TO PREVIOUS EXPRESSION. — "BANK STOCK."

*A testatrix gave to T. J. R. the sum "of 100l. Bank Stock," when he attained the age of 21 years, and "in case of his death," to her grandson: Held, that gift over took place on the death only of T. J. R. under the age of 21.*

*The testatrix, at her death, had no Bank Stock, but two sums of 200l. Consols.: Held, that the gift was not a specific legacy, and must be made good out of the general assets.*

THE testatrix, by her will, gave to Thomas James Rose "the sum of 100l. Bank Stock," when he attained the age of 21 years, and "in case of his death," to her grandson, James Rose. It appeared at the death of the testatrix that she had two sums of 200l. Consols., but no Bank Stock, and this special case was now presented for the opinion of the Court.

*Fooks* for the residuary legatees, the plaintiffs.

The Vice-Chancellor (without calling on *H. Stevens* for the defendants) said, that the words "in case of his death" referred to the period previously mentioned, and that therefore the gift over took place on the death only of T. J. Rose under 21. As to the "Bank Stock," it did not seem the testatrix specifically gave that stock, but merely stock, and it must be made good out of the general assets.

## Vice-Chancellor Stuart.

*Raby v. Ridehalgh.* Nov. 18, 1854.

BREACH OF TRUST BY TRUSTEES AT INSTANCE OF TENANT FOR LIFE.—REIMBURSEMENT.—COSTS.

*Where an improper and insufficient investment of trust moneys had been made by the trustees against their wish, at the express instance of the father of infant cestui que trustent, for the purpose of increasing his income: Held, that the trust estate must be recouped out of his income upon the money being lost:—no costs were allowed to the trustees in a suit by the next friend to obtain the reimbursement of the trust fund, those of the plaintiffs to come out of the fund.*

THIS bill was filed on behalf of infant cestui que trustent by their next friend, against their father, the tenant for life, and the trustees, to compel the reimbursement to the trust of certain moneys which had been lost in consequence of being invested on improper and insufficient securities at the instance of the father for the purpose of increasing his income.

*Walker, Wigram, Racon, Malins, Elmsley, Prior, Selwyn, H. Humphreys, and Dryden* for the several parties.

The Vice-Chancellor said, that the money had been invested against the wish of the trustees on being urged by the father, and they were entitled to be indemnified by him upon the trust fund being lost. There would therefore be a decree for the trust estate to be recouped out of the income of the tenant for life. No costs to the trustees, and the plaintiffs' costs to come out of the fund.

#### Court of Queen's Bench.

*Regina v. Stokes.* Nov. 3, 1854.

ADMISSION TO BAIL OF PRISONER CHARGED WITH MANSLAUGHTER.—ACCIDENT.

*A rule nisi for a certiorari to bring up the depositions against a poacher charged with manslaughter in order to his admission to bail, was refused, where it appeared he had gone out with a general idea of violence, although he alleged that the deceased met his death by the accidental going off of his gun.*

THIS was a motion for a rule nisi for a certiorari to bring up the depositions against a prisoner who had been committed to prison on a charge of manslaughter, in order to his admission to bail. It appeared that the prisoner was out poaching with a gun, and had warned the deceased, who was endeavouring to take the gun from him, that it was loaded, and in his affidavit he alleged in support of this motion that it had gone off accidentally.

*Gray* in support.

The Court said, that as it appeared from a previous conversation between the prisoner and another person that he had gone out with a general idea of violence, the rule must be refused.

*Griffiths v. Danbuz.* Nov. 15, 1854.

RENT-CHARGE.—LIABILITY OF OUTGOING LESSEE TO PAY FOR CURRENT HALF-YEAR.

*A lessee, whose lease was determined by notice on September 29, left his wheat to be threshed pursuant to a covenant in the lease, and it was seized under a distress for tithe commutation rent-charge becoming due on October 1. It appeared he had not paid rent-charge in respect of the first half-year of his tenancy: Held, that he could not recover under the 6 & 7 Wm. 4, c. 71, damages for such seizure from his lessor.*

THIS was a rule nisi by leave reserved to enter the verdict for the defendant, who was an outgoing tenant for years, to recover damages from his lessor for allowing his wheat, which had been left on the ground to be threshed, in accordance with a covenant in the lease, to be seized under a distress for tithe commutation rent-charge. The defendant had by notice determined the lease on September 29, 1852, and the rent-charge for the half-year became due on October 1 following. It appeared that by the lease the tenant was bound

to pay all the tithe commutation rent-charge, but that by the custom of the county the outgoing tenant was liable to pay the amount becoming due immediately after the tenancy was determined.

*Edwin James and Hoskins* showed cause against the rule, which was supported by *Bovill*.

The Court said, that there was no doubt the plaintiff should have paid the rent-charge, and this was shown by his not having paid that for the first half-year of his tenancy. It did not appear on reference to this Act (6 & 7 Wm. 4, c. 71), that the allegation of the defendant's liability was made out, and as this was an action for the neglect of a personal duty, and it was not shown to be imposed on the defendant, he was entitled to a verdict, and the rule would therefore be made absolute.

#### Court of Common Pleas.

*Bloor v. Houston.* Nov. 20, 1854.

COUNTY COURTS.—ACTION BY HIGH BAILIFF TO RECOVER COSTS FROM INTERPLEADER CLAIMANT.

*The high bailiff of a County Court executed a writ of execution, but in consequence of a claim by another person he obtained an interpleader summons under the 9 & 10 Vict. c. 95, s. 118, and paid the proceeds into Court, deducting only his ordinary costs. The interpleader claimant obtained judgment and took the money out of Court: Held, on special case, that the high bailiff could not sue, as for money had and received, the interpleader claimant for the costs of the interpleader proceedings and of the original levy, which, under the 148th rule of practice in the County Courts, he was entitled to deduct.*

IN this special case for the opinion of the Court, it appeared that the plaintiff, who was high bailiff of the Newcastle-under-Lyne County Court, had executed a writ of execution from the Liverpool County Court, but that on another person claiming the goods he had obtained an interpleader summons under the 9 & 10 Vict. c. 95, s. 118, but which was decided in favour of the present defendant. He thereupon paid the whole amount into Court deducting only his ordinary costs, and not the costs of the original levy and of the interpleader order, pursuant to the 148th rule of practice in the County Courts, and the defendant took the amount out of Court. This action was now brought to recover the amount of such costs, as for money had and received.

*Mills* for the plaintiff; *Mellish* for the defendant.

The Court said that the action was brought for costs which the plaintiff had incurred, and not for fees due, which the interpleader claimant was liable to pay, and which he might have deducted from the sum paid into Court. As, however, he had not so done, his right of action for money had and received was gone, and the defendant was entitled to judgment.



## Court of Exchequer.

*London and North Western Railway Company v. Sharp.* Nov. 7, 1854.

**ACTION AGAINST ATTORNEY FOR NEGLECTING TO KEEP AND DELIVER UP CLIENTS' PAPERS IN REASONABLE ORDER.**

*Held, refusing a rule nisi on leave reserved to enter the verdict for the defendant, that it is the duty of an attorney to keep the papers of his clients in proper order, and, when called on, to deliver them up in a reasonable order and condition; and an action for neglecting so to keep and deliver up the papers is maintainable.*

THIS was a motion, pursuant to leave reserved, for a rule nisi to set aside the verdict for the plaintiffs and enter it for the defendant in this action, which was brought against him as the plaintiffs' attorney for neglecting to keep their papers and delivering up the same when called upon in a reasonable manner. It appeared, on the trial before *Crowder, J.*, at the last Lancaster Assizes, that upon the defendant being removed from the office of solicitor to the plaintiffs, he had delivered over the papers in great confusion, and they had been put to great expense in arranging them. The jury found for the plaintiffs, but with 1s. damages, on the ground of laches in bringing the action.

*Watson* in support.

The Court held, that an attorney was bound to keep his client's papers in proper order, and to deliver them up when called on in a reasonable order and condition, and the question whether they had been given up in a reasonable order was for the jury. The plaintiffs were therefore entitled to a verdict, and the rule would be refused.

*Martin v. Heming.* Nov. 16, 1854.

**COMMON LAW PROCEDURE ACT, 1854.—MOTION UNDER S. 51 TO EXHIBIT INTERROGATORIES BEFORE PLEA.**

*Quære, whether the Court has power under the 17 & 18 Vict. c. 125, s. 51, to give the defendant leave to exhibit interrogatories to the plaintiff before pleading to the declaration; but a motion for such order was refused where the affidavits did not disclose a case of sufficient urgency to call for the interference of the Court.*

THIS was an action to recover the amount of a bill of exchange drawn by the plaintiff's son and accepted by the defendant.

*Quære* now appeared in support of a motion under the 17 & 18 Vict. c. 125, s. 51,<sup>1</sup> for

<sup>1</sup> Which enacts, that "in all causes in any of the Superior Courts, by order of the Court or a Judge, the plaintiff may with the declaration, and the defendant may with the plea, or either of them by leave of the Court or a Judge, may at any other time deliver to the opposite party, or his attorney (provided such party, if not a body corporate, would be liable to be called

leave to exhibit on behalf of the defendant interrogatories to the plaintiff before pleading to the declaration, on the ground that he was colluding to enforce payment of the bill with his son, who had signed a deed of composition together with six-sevenths of the defendant's creditors.

*Aspland* showed cause in the first instance, on the ground that the application was premature.

The Court, without deciding the question as to the construction of the Act, said, that the rule would be refused, as the affidavits did not disclose a case of sufficient urgency to call for the interference of the Court. Although it might be convenient for a defendant to obtain all the facts before he pleaded, it was better that the interrogatories should not be filed before the plea, when the Court could tell what the issues were and determine as to the points on which the party should be examined. The rule would be refused.

*Hamilton v. Bell and others.* Nov. 18, 1854.

**BANKRUPT.—GOODS IN POSSESSION AND REPUTED OWNERSHIP OF.—RIGHT OF ASSIGNEES.**

*The plaintiff had at various times purchased and paid for clocks of a clockmaker, and had not removed them as they were to be cleaned, but the shop-tickets were taken off them: Held, that on a bankruptcy such clocks did not pass to the assignees as being in the possession and reputed ownership of the bankrupt.*

THIS was a motion, pursuant to leave reserved, for a rule nisi to set aside the verdict for the plaintiff, and enter a nonsuit in this action, which was brought against the assignees of a bankrupt to recover possession of certain clocks which had been purchased by the plaintiff at various periods before the petition of adjudication, but had not been removed from the premises as they were to be cleaned, but the shop tickets had been taken off. On the trial, before *Martin, B.*, the plaintiff obtained a verdict, subject to this motion.

*Lusk* in support.

The Court said, that the rule as to reputed ownership was not applicable where goods were allowed to remain in the possession of a tradesman whose business required him to have in his shop the goods of others for the purpose of repair, &c., and the fact of his so having them ought not *per se* to give him any unfounded credit with others so as to render them liable on his bankruptcy. The rule would accordingly be refused.

and examined as a witness upon such matter), interrogatories in writing upon any matter as to which discovery may be sought, and require such party, or in the case of a body corporate any of the officers of any such body corporate, within 10 days to answer the questions in writing by affidavit to be sworn and filed in the ordinary way."

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—“Still attorneyed at your service.”—*Shakespeare.*

SATURDAY, DECEMBER 2, 1854.

### LIMITED LIABILITY PARTNERSHIPS.

In another part of the present Number will be found a brief analysis of the evidence given before, or transmitted to, the Mercantile Law Commissioners, on the subject of limited liability partnerships; and it will be observed by our readers that various classes of witnesses have given their opinions on this important subject. Amongst them we find bankers, merchants, and bill brokers of London and many other great cities and towns; members also of several chambers of commerce, solicitors of extensive practice, and scientific men.

The witnesses who are in favour of limited liability, of course, accompany their opinion with a recommendation that all such partnerships should be sufficiently registered, in order that the public may be fully acquainted with the names of every partner, whether his liability be limited or unlimited. If limited, the extent of the limitation must be precisely stated, and each limited partner will, of course, be liable to the creditors of the firm or company for any part of his share of the subscribed capital which may not have been paid up.

Several of the witnesses who support the general principle, would confine its application to undertakings of an extensive kind, such as railways and mines. The general principle is indeed recognised and adopted in numerous societies as well as companies, the joint stock or capital of which is held in shares, some of the proprietors holding a few and others many shares. These partnerships, it will be recollected, are constituted and established at great expense by Acts of Parliament and Royal charters.

Under the proposed amendment of the law, this expense would be saved. The deed of partnership would be prepared by the solicitor, registered at moderate cost, and notified to the public under the provisions of the Act.

The question, after all that may be urged against it, is one merely of *amount* and *mode of proceeding*, not of principle. It seems to be admitted that if a projected enterprise required 100,000*l.* to conduct and carry it into effect, the capital might be raised in shares, and such shares held in unequal proportions by different individuals, and each liable only for the amount he subscribed. Now the extent of capital will, of course, depend on the nature of the undertaking. A large capital may be required in the management of a business which, by ordinary skill and diligence, is liable to little risk, and there would be no difficulty in finding a competent number of persons to subscribe for the requisite funds. There may, however, be numerous projects which can be carried into effect for 20,000*l.* or less, and yet are of so uncertain a nature, or perhaps hazardous a description, that few individuals will embark in them, without the assistance of funds raised from a somewhat numerous body of subscribers or proprietors.

It may be asked, why should these enterprises be abandoned, which, if successful, will benefit both the public and the projectors, because in the present state of the law each partner in the transaction, though deriving a small share only of the profits, is liable, in case of loss, to the whole extent of his property? He may legally lend 1,000*l.* and exact 20*l.* per cent. interest, and take such security as will give him a preference over other creditors, and yet he is pro-

hibited from putting the 1,000*l.* into the joint-stock of the company and taking a share of the net profit, because, if the concern fail and his partners cannot pay their share of the loss, he must make up the deficiency.

This state of things appears to be really prejudicial to the creditors whom the opponents of the measure seek to protect. It is supposed, that if more capital could be obtained by altering the law, than is now forthcoming, there would be an increase of "reckless trading," and that creditors would not take the trouble to ascertain the limits of the several partner's liability, and debts would be incurred to a ruinous amount. We hold, however, that the Legislature will have sufficiently discharged its duty, if it provide creditors with the means of easily ascertaining the several amounts of liability of each partner; and if merchants, manufacturers, and traders will give credit without inquiry, they must abide the consequences. If the firm of "Jones Brown, and Company" obtain credit from an incautious dealer, who imagines that under this high-sounding firm there are several rich partners, and it turns out that the company consists only of Mr. Jones Brown, can he justly complain of the law for the loss he may sustain? Neither can he blame any one but himself, if he gives credit to a company which he supposes to be unlimited, when the register will show him the contrary. Besides, in these limited partnerships, it may be provided that the word "registered" or "limited" shall be used in the name or style of the firm, so as to give constant notice to those who deal with it, however incautious or indolent they may be.

It may be useful to refer particularly to the opinions of some of the lawyers, as well as bankers and others, who have been examined. We shall select in the first place the Masters in Chancery and Commissioners in Bankruptcy.

Mr. Farrer, the late Master in Chancery, suggests that limited responsibility should be adopted only where there are more than six partners holding shares of a certain amount, and the business being subject to periodical inspection.

Sir George Rose also gives in his adhesion to the proposed change in the Law of Partnership. It is proper to mention, however, that Mr. Tinney is on the opposite side.

Mr. Commissioner Fane and Mr. Com-

missioner Holroyd support the measure, and we are not aware of any opposing Commissioner either of the London or Country districts.

Several eminent Counsel have also expressed a favourable view of the proposition. Amongst these are Mr. Swanston, Q. C.; Mr. Lowe, M. P.; Mr. Richards, the Speaker's Counsel and Professor of Political Economy in the University of Oxford; Mr. James Stewart, Secretary to the Copyhold Commission; Mr. Vansittart Neale; and Mr. Ludlow.

Mr. Bellenden Ker is also in favour of the limitation under certain safeguards which he suggests.

The Solicitors in favour of the plan are as follow:—

Mr. Cotterill approves of the alteration, subject, in case of failure of a firm, to the payment of the full amount of the partners' subscription without deducting previous payments.

Mr. Hollams, of the firm of Marten, Thomas, and Hollams, suggests that the limited capital of each partner should not be less than 1,000*l.*, and that there should not be more than 25 partners.

Mr. Baker, of the firm of Baker, Ruck, and Jennings, also supports the alteration.

Mr. Hesp, of Huddersfield, and Mr. Smith, of Sheffield, are also in favour of limited liability.

It is right to add, that Mr. Freshfield, the Bank Solicitor, would limit the partnerships in question to undertakings of long duration and requiring a large permanent outlay.

The Bank Directors are not agreed: Mr. Cotton and Mr. Latham are against the proposition, and Mr. Norman and Mr. Hankey in its favour. Mr. Hubbard, the Governor, supports it in a modified form, as to loans for trading purposes, and Mr. Weguelin, the Deputy Governor, is favourably inclined.

The Chambers of Commerce in various places also hold different opinions on the subject.

Lord Overstone and Mr. Prescott the Banker, are against it, except as to companies formed under the authority of the Board of Trade or Parliament.

The proposition is also supported by the following men of scientific eminence:—Professor Babbage, of the University of Cambridge; Mr. Leone Levi, Lecturer at King's College, London; and Professor More, of the University of Edinburgh.

## EVIDENCE ON LIMITED LIABILITY PARTNERSHIPS.

THE large parliamentary volume published on this subject, with the evidence submitted to the Mercantile Law Commissioners, has been read, we believe, by very few of our brethren; and it may therefore be useful, as the Session of Parliament approaches, to notice the substance of the answers which have been transmitted to the Commissioners on the question of *Limited Liability Partnerships*.

The communications made by witnesses in the United Kingdom are to the following effect:—

No. 5. *Anderson, James Andrew*, late manager of the Union Bank of Scotland, *Glasgow*.

P. P.<sup>1</sup> 1<sup>2</sup> General law of unlimited liability should not be changed or modified.

J. S. A.<sup>2</sup> 2. In enterprises of too great magnitude for private adventure (except banking and insurance companies), liability may be limited at the discretion of Parliament, or, under certain limitations, of the Board of Trade.

No. 41. *Armitage, George*, woollen cloth manufacturer and merchant, *Huddersfield*. (Selected by the Chamber of Commerce of Huddersfield).

P. P. 1, 5. No limitation of liability. 16. General registry of partnerships, annual.

J. S. A. 3, 11. Limitation of liability of all or any partners only by special Act of Parliament, (14) to double amount subscribed. 20. Registration of names and amount of shares, annual.

No. 51. *Ashworth, Henry*, spinner and manufacturer, *Manchester*. (Selected by the Chamber of Commerce of Manchester).

P. P. Present unlimited responsibility to be in no degree changed.

J. S. A. Exception in favour of limited liability allowable where large masses of capital, beyond individual means, required for large public undertakings.

No. 38. *Babbage, Charles*, late Lucasian Professor, *Cambridge*.

Favourable to alterations permitting limitation of liability.

No. 69. *Baker, Thomas*, of the firm of Baker, Rack, and Jennings, solicitors, *Lime Street, London*.

P. P. and J. S. A. 3. Liability of non-acting partners may be limited in any business (except, perhaps at first, banking and insurance), with-

out special authorisation, (14) to agreed advance; in certain cases creditor of partnership may recalc profits received since his debt was contracted, but not beyond six years. 16. Shares transferable, but liability of transferer at the time of transfer to continue. 18. No compulsory dissolution on loss. 19. French law of non-interference by limited partner too strict. 20. Registration of deed of settlement, of names of acting partners, and if liable for calls, of the limited partners also. 21, 22. No compulsory publicity of accounts.

J. S. A. 3, 11. Companies with very large capitals (say 1,000,000*l.*) to require sanction of Board of Trade. Act of Parliament unnecessary. Lastly, present Joint-Stock Companies' Registration Act contains impracticable requirements.

No. 59A. *Barber, James Henry*, manager of the Sheffield Banking Company, *Sheffield*.

3, 8, 10, 12. That joint-stock banks have been advancing, and private banks receding, must be chiefly owing to feeling of confidence on part of depositors and public, arising from unlimited responsibility of shareholders, with which feeling limitation of liability would do away. When joint-stock banks fail the shareholders are the parties who ought to bear the loss.

No. 11. *Baxter, David*, merchant, *Dundee*. (Selected by the Chamber of Commerce of Dundee).

P. P. 1. The principle of limited liability in associations for mercantile purposes should not be admitted.

J. S. A. 12. Power of conferring charters of limited liability should not be in Board of Trade; Parliament alone should confer it, and for national or local public purposes only.

No. 34A. Report by Chamber of Commerce, *Belfast*.

Approves American Special Partnerships Act—preferable to the continental commandite partnership law, because, under former, special partners' capital to be paid up at once. Contracts in partnership articles to refer disputes to arbitration should be enforced.

No. 47. *Bousfield, Charles*, merchant, *Leeds*. (Selected by the Chamber of Commerce of Leeds).

P. P. 1. Liability not to be limited in any partnership for trade.

J. S. A. 11. For draining or other like objects, Board of Trade may be empowered to confer limited liability.

Lastly. All partnerships to be registered.

No. 35. *Bristow, James*, director of the Northern Banking Company, *Belfast*. (A Vice-President of and selected by Chamber of Commerce, *Belfast*.)

1, 2. Unfavourable to any limitation to liability of partners. 3. If admitted at all, to be strictly confined to enterprises not likely to be undertaken by few individuals. 11. Charters confirming limited liability may be granted when approved of by Board of Trade.

No. 39. *Brooke, John*, of the firm of John Brooke and Sons, woollen cloth manufacturers

<sup>1</sup> Private partnerships.

<sup>2</sup> These numbers refer to the replies, which contain the *principal matters recommended* by the respondents. Of such matters an abstract is here given. It was feared that an abstract of arguments and views could not be given with the necessary conciseness, without risk of an imperfect statement of the views of the respondents.

<sup>3</sup> Joint-Stock Associations.

and merchants, *Huddersfield*. (Selected by the Chamber of Commerce of Huddersfield.)

P.P. 1, 3. No limitation of liability in these. Registration of all actual partners.

J.S.A. 3. If more than six partners, a capital of 30,000*l.* at least to be paid into Bank of England, and not withdrawn till registration certified. Liability of all shareholders may be limited to a fixed multiple (say three times) the capital paid up. 14. Provision for surplus fund out of profits. 16. Shares transferable with registration. 18. No compulsory dissolution on loss. 22. Registration of names, not of accounts.

No. 12. *Brown, Joseph*, merchant, *Dundee*. (Selected by the Chamber of Commerce of Dundee.)

P.P. and J.S.A. 3. Liability of non-acting partners may be limited, without special authorisation, in any business (14) to declared contribution; dividends to be received to be retained. 16. Shares transferable when paid up in full. 18. No compulsory dissolution on loss. 20. In public companies compulsory registration of contract of co-partnership in legal form, (21) not of accounts.

No. 32. *Brown, William*, M.P., of the firm of Brown, Shipley, and Co., merchants, *Liverpool*. (Selected by the Chamber of Commerce of Liverpool.)

1. A change from present system of unlimited liability would be injurious when private capital is equal to the undertaking. Cases of extreme risk, as in mining, &c. and extensive railroads, &c., where individual capital not sufficient, should be exceptions. 11. Limited liability should be obtained from Parliament only; the power placed in Board of Trade difficult and onerous.

No. 68. *Burroughs, Jeremiah*, merchant, *Addle Street, London*.

P.P. 2, 3, 19. Liability of all or any of the partners may be limited in any business, without special authorisation. 14. Capital to be paid up; profits accruing to commandite partners to be withdrawn only every three years. 16. Shares not transferable. 18. Compulsory dissolution, or further liability, after loss of two-thirds of capital. 19. Limited partner to be free to take active part. 20, 22. Registration and publication of capital, and share of profit. 21. No compulsory publicity of accounts.

J.S.A. 11. One principle to apply to all; perhaps liability should extend to double the paid-up shares, and, (3) a minimum amount of contribution fixed. 21. Half-yearly statements of accounts.

No. 24. *Clark, James*, of the firm of James Finlay and Co., merchants, *Glasgow*. (A member of the Chamber of Commerce of Glasgow.)

1. The principle of unlimited liability should be maintained (3 and 11) without any exception whatever.

No. 9. *Cotterill, William Henry*, solicitor, *Throgmorton Street, London*.

P.P. 3. Liability of non-acting partners may

be limited in any business without special authorisation, (4) but so that at the time of failure each limited partner shall be liable to pay his full subscription without reference to previous payments or receipts; (12) in banks issuing notes payable to bearer (which should not be permitted), any partner to be liable without limitation on the notes. 16. Shares transferable with registration. 18. No compulsory dissolution on loss. 20. Registration of partners' names and limited contributions, (21) not of accounts.

J.S.A. 6 and 11. May be formed without special authorisation, but registering officer should ascertain that each partner understands the partnership agreement.

No. 4. *Cotton, William*, a director of the Bank of England, *London*.

P.P. No material alteration of the law as to liability of partners.

J.S.A. In undertakings of public importance, limitation of liability should be provided for by act or charter.

No. 61. *Cross, William*, late manager of the Liverpool Borough Bank, and now a partner in the firm of A. Dennistoun and Co., merchants, *Liverpool*.

P.P. and J.S.A. 3, 19. Liability of all or any partners may be limited in any business without special authorisation; (11, 20) to be clearly set forth on all documents or bills of the company; perfect publicity of names and subscribed capital. 18. No compulsory dissolution on loss. 21. No compulsory publicity of accounts.

No. 66. Council of the Chamber of Commerce of *Dublin*.

P.P. 3. Liability may be limited where not more than two partners, one at least being unlimited, and each silent partner bringing in not less than 1,000*l.*, in private trade or manufacture only, not banks, insurance, or other undertakings of a public or joint-stock character, (14) to declared contribution; profits drawn out in previous two years to be liable to be refunded. 4, 20. Registration and publication of firm, names of all partners, business, contributions of limited partners, and the term of partnership; the "firm" to indicate limitation. 16. Shares not transferable. 18. Capital lost to be replaced out of profits, or by new investment. 19. No restriction or interference by limited partners, except in purchasing or selling, receiving or giving payments, or writing name of firm. 21. No compulsory publicity of accounts.

J.S.A. 11. For great public purposes may obtain limitation of liability by grant of Board of Trade on merits of each case. 21. Publicity of accounts.

No. 52. *Bide, Edward*, merchant, *Manchester*. (Selected by the Chamber of Commerce of Manchester.)

P.P. and J.S.A. 1. Unlimited responsibility should not be altered. 11. All should be on one common principle as to liability.

No. 27. *Ellis, William*, manager of the Indemnity Marine Insurance Company, *London*.

P.P. and J.S.A. 1—5. Liability of partners, whose names do not appear in the firm, may be limited, provided they make known to all parties with whom they contract the extent of their liability. 14. Past distributions of profits, which appear to have been justified, not to be disturbed.

No. 25. *Entwistle, William*, Banker, *Manchester*. (Selected by the Manchester Commercial Association.)

P.P. Unlimited liability should be retained without modification as general rule, with regard to trading associations; special exemptions by charter or act.

J.S.A. 4—6. General enactment to give the right of association for waterworks and other public local works, lodging houses, reading rooms, and the like, to be defined with reference to proportion by which fixed capital exceeds floating capital. 11. Board of Trade to have power only to declare whether an association comes within those authorised by the general law. 14. Liability to be limited to subscribed capital. 16. Shares transferable. 20. Registration of constitution, (21) not of accounts, except in insurance offices.

No. 63. *Fane, Cecil*, one of the Commissioners of the Court of Bankruptcy, *London*.

P.P. and J.S.A. 3. Limited responsibility applicable to all persons who put capital into a house, but do not make themselves general partners by their own agreement, or announce themselves as such, in any business, (11) without interference of Board of Trade or Parliament. 14. Profits earned to be retained; taking dividend known not to have been earned to be deemed a fraud. 16. Shares transferable. 18. No compulsory dissolution otherwise than in bankruptcy. 20, 21, 22. No compulsory registration of names of contributors. 31. Suggested enactment to legalise advances of capital for a share of profits, without constituting partnership, and to restrict excessive interest or profits, in case of bankruptcy (page 171). Suggested enactments for remedies against companies.

No. 55. *Farrer, James William*, late a Master in Chancery, *London*.

P.P. 3. Limited responsibility not to be made applicable.

J.S.A. 3. Limited responsibility to be made applicable to partnerships of more than six, shares being not less than 50*l.* for any business, subject to periodical inspection. 16. Shares transferable. 18. Inspectors to express opinion as to winding up or continuing. 19. Some limited partners to be permitted to take part in the business. 20. Registration of description and terms, names, and constitution of partners. 21. Accounts to be inspected and distributed half-yearly.

No. 8. *Freshfield, James*, jun., of the firm of J. C. & H. Freshfield, Solicitors, Bank Buildings, *London*.

No limitation of liability of partners in trade towards the public.

J.S.A. Corporations, or societies of shareholders with transferable shares, the business

being carried on by directors, and the liability of shareholders limited, should not be permitted for trading purposes. They may be useful for undertakings requiring long duration or large permanent outlay.

P.P. Commandite partnerships objectionable.

No. 33. *Gilbart, James William*, F.R.S., General Manager of the London and Westminster Bank, *London*.

Joint Stock Banks. 9. General enactment fixing conditions on compliance with which shareholders should have limited liability without reference to Treasury. 10. The general principles might be:—fixed amount of paid-up capital; liability for three or four times the capital; restriction against incurring debt beyond a certain multiple of paid-up capital. 12. Prohibition against any business but banking, against investments in foreign securities, advances on land and other dead securities, re-discounting bills of exchange, and limitation of loans to one person or firm. 13. No difference between banks issuing and not issuing notes. 16. If commandite partnerships introduced, ample information should be given by them to every customer, otherwise than by registration or publication in *Gazette*.

No. 5*A.* Report of Chamber of Commerce *Glasgow*. (April 2, 1851.)

Adverse to limitation of responsibility, except in special cases of national importance.

No. 1. *Gurney, Samuel*, of the firm of Overend, Gurney, & Co., Billbrokers, *London*.

P.P. Liability of members of firms of limited numbers should be unlimited.

J.S.A. Limitation of liability expedient, when the object is one for which a private firm would be incompetent—except banking.

No. 22. *Hankey, Thomson*, jun., M.P., a Director and late Governor of the Bank of England, *London*.

Every facility should be given for arrangements regarding partnerships not inconsistent with honesty. The only enactment requisite is, that every association of more than a very limited number of partners be publicly registered, and liability of each partner specified; and where no such registration, each partner to be responsible without limit.

French system of "sociétés anonymes" may be advantageously introduced.

No. 50. *Hewes, William*, Chairman of the Committee of Merchants and Traders for the Amendment of the Law of Debtor and Creditor, *London*.

P.P. 1, 3. No limitation of liability.

J.S.A. 3, 12. For banking or insurance no limitation of liability. 11. For a new or useful purpose, requiring very considerable capital, to be entitled to a charter with limited liability on complying with regulations of a general Act, and assent of Board of Trade to the object within the scope of the Act.

Arbitration clauses to give right to compulsory reference.

No. 49. *Hepp, Edward Lake*, Solicitor, *Huddersfield*. (Selected by the Chamber of Commerce of Huddersfield.)

P.P. 2. Liability of non-acting partners may be limited in partnerships of not more than (say) six. 17. To be formed for (say) five years only at a time for any business except banking and insurance. 2, 20. Names of all the partners, amount of limited partners' capital, the term, and any other important provision, to be registered and advertised. 2. Limited partners' capital to be paid up at once. Profits annually withdrawn to be limited to 8 or 10 per cent.; liability to continue till dissolution published, or (perhaps) till three years after notice. 2, 16. Shares not transferable. 18. When three-fourths of capital lost, dissolution optional to, but not compulsory on, limited partners. 21. Publicity of accounts not advised.

J.S.A. 2, 11. Limitation of liability, to be obtained only (as at present) by special application to the Crown or Parliament. 8. Observations against limitation of liability of shareholders in joint-stock banks.

No. 26. *Holland, Charles*, Merchant, *Liverpool*. (Selected by the Chamber of Commerce of Liverpool).

P.P. 3. Liability of non-acting partners may be limited in any business (11), without special authorisation (14), to the original sum, the assumed profits to remain as a guarantee, or at all events only interest at a fixed rate to be withdrawn, until expiry of partnership. 16. Shares not transferable. 18. No compulsory dissolution on loss. 20. Registration of partners' names, amount of capital, duration (21), not of accounts.

J.S.A. 11. To be formed, when interfering with private rights, only by Act of Parliament, when not involving private rights, under charter to be granted by a public board under known provisions and at small cost. 16. Shares transferable, but in banks only when paid up.

Observations on banks.

No. 56. *Hollams, John*, of the firm of Marten, Thomas, and Hollams, Solicitors, *London*.

P.P. and J.S.A. 3, 16. Liability of non-acting partners may be limited in any business (except banking) to double the subscribed capital.

P.P. and J.S.A. 3, 16. Liability of non-acting partners may be limited in any business (except banking) to double the subscribed capital.

P.P. 3. Composed of not more than 25 persons; minimum capital of each limited partner 1,000*l*. 16. Shares transferable, if so agreed. 3, 20, 21, 22. No further particulars to be registered than the names and amount of capital of partners.

J.S.A. 3. Of more than 25 persons; Registration Act, with certain amendments, still to apply; shares to be not less than 100*l*. each, to be paid up in full. 16. Shares transferable as at present. 20, 21, 22. Denomination should mark the nature of the undertaking. Deeds, &c., to be registered as at present.

No. 42. *Holroyd, Edward*, one of the Commissioners of the Court of Bankruptcy, *London*.

P.P. In the first instance, limited responsibility should be made applicable to private partnerships of a limited number of partners, not for banking or insurance; registration of names and descriptions of partners, capital, term, and changes of partners; unlimited liability for partners not paying up capital as agreed, or withdrawing it during term: profits of previous six years to be liable to be refunded.

J.S.A. For enterprises of local public utility, greater facility for obtaining the benefit of 1 Vict. c. 73 (Companies' Powers and Immunities by Letters Patent Act).

No. 45. *Howell, John*, of the firm of Ellis, Everington, & Co., Warehousemen, St. Paul's Church Yard, *London*.

P.P. 3, 19. Liability of non-acting partners may be limited in any business, (11) without special authorisation, (4) for a term not exceeding seven or ten years. 16. Shares not transferable. 4. Registration of limited partners' capital actually invested, and share of profits, (21) not of accounts.

J.S.A. 11. May be formed without special authorisation.

No. 28. *Hubbard, John Gellibrand*, Governor of the Bank of England, *London*.

P.P. Where unlimited power of borrowing exists, unlimited liability should attach; security of shareholder in restricting company from incurring debt.

But loans to traders for an agreed share of profits should be authorised, the lender to incur no further liability, and to rank with other creditors in bankruptcy of trader.

No. 48. *Irwin, Edward*, Merchant, *Leeds*. (Selected by the Chamber of Commerce of Leeds.)

P.P. 1. The Irish Act, 1782, to be introduced into Great Britain, limiting the number of partners to (say) six, of whom one-third to be acting. 14. Profits of last three years to be liable to be refunded.

J.S.A. 11. Public companies (except banks of issue) to have limited liability. Shares transferable; liability to continue for twelve months after transfer.

No. 34. *Kennedy, James*, of the firm of J. and T. Kennedy, Muslin Manufacturers, *Belfast*. (A Vice-President of, and Selected by, the Chamber of Commerce of Belfast.)

P.P. and J.S.A. 3, 4. Liability of non-acting partners may be limited in any business (except banks of issue) (11) without special authorisation; (14, 15) profits withdrawn in previous two years to be liable to be refunded. 16. Shares transferable. 17, 18, 19. After yearly balance-sheet showing insolvency, limited partner to dissolve, or incur unlimited liability for subsequent debts. 20. Registration and publication of paid-up capital of limited partners, nature of business and duration of partnership, (21) not of accounts.

No. 57. *Ker, H. Bellenden*, Barrister-at-Law, *London*.

P.P. and J.S.A. On general principle of limited liability, or commandite, not to be al-

lowed at present. Limitation of liability of non-acting partners should be allowed, when sanctioned by some board or officer, who should judge of expediency of undertaking, and see that due protection was afforded to the shareholders and creditors.

No. 18. *Kisnear, John G.*, Merchant, *Glasgow*. (Secretary of, and selected by, the Chamber of Commerce of Glasgow.)

P. P. and J. S. A. 3. As a general rule, liability of partners in trading joint-stock companies not to be limited. Exceptions in favour of great national undertakings requiring greater amount of capital than can be otherwise provided. 11. Limited liability to be conferred by Parliament only, not by Board of Trade.

No. 31. *Latham, Alfred*, a Director of the Bank of England, *London*.

Distinction between associations of many for some public work, where, after completion, no buying on credit, and no selling—in certain enterprises of which kind limitation of liability may be to public advantage—and association of few for ordinary trading, in which unlimited responsibility should be in no degree modified.

No. 46. *Lawson, Charles*, Seedsman, *Edinburgh*. (Selected by the Chamber of Commerce and Manufacturers of Edinburgh.)

P. P. 7, 11, 19. Liability of all or any of the partners may be limited to double the paid-up capital by special authorisation of Board of Trade, in any business (18) to be under the control of a board to be satisfied of payment of registered capital. 16. Shares not transferable without consent of other members. 18. Compulsory dissolution when 75 per cent. of capital lost. 20. Name to indicate limited liability. Registration of names and contributions, (21) not of accounts.

J. S. A. 11. With liability limited to paid-up capital, may continue to be sanctioned by the Crown or Parliament.

No. 15. *Levi, Leone*, Lecturer on Commercial Law, King's College, *London*.

P. P. and J. S. A. 3. Liability of non-acting partners may be limited without special authorisation in any business, except banks of issue, (14) to declared contribution; profits withdrawn to be retained, but small reserve fund to be provided. 16. Shares not to be transferable. 18. Compulsory dissolution on loss of 25 per cent. (?). 20. Compulsory registration of constitution, (21) and of periodical accounts. 23. Statistics of Irish anonymous partnerships. 25. Statistics of partnerships in France.

No. 15A. Abstract of a common form of deed of commandite partnership in Italy.

No. 17. *Lowe, Robert*, M.P., one of the Joint Secretaries of Board of Control, *London*.

P. P. and J. S. A. 3. Liability may be limited in any business, (11) without special authorisation, (12) as the shareholders may determine. 15. Government audit of accounts. 18. No compulsory dissolution on loss. 20. Compulsory registration of terms of partnership.

No. 36. *Ludlow, John Malcolm*, Barrister-at-Law, *London*.

P. P. and J. S. A. 3, 19. Liability of part-

ners, non-acting towards strangers may be limited in any business, (11) with preliminary sanction of a public board, if more than seven managing partners and 40,000*l.* capital, or if more than, 5 per cent. profit sought, the only guarantees to be required being general ones as to character, resources, and management. 14. Liability to be limited to declared contribution, profits withdrawn not to be refunded. 16. Shares transferable when paid up, with registration. 19. In case of loss of given proportion of capital, dissolution to be taken into consideration, and stringent powers of dissolution to be given. 4. Intimation of limited liability through name; particulars to be registered; keeping and auditing accounts; a public board to have power of public auditor. Appendix.—Summary clauses in the event of execution or enormous loss. Heads of Bill to amend Irish Anonymous Partnerships Act.

No. 58. *Macfarlan, John*, Chemist, *Edinburgh*. (Selected by the Chamber of Commerce and Manufacturers of Edinburgh.)

3. Advantages not to be given to partnerships or joint-stocks when individual capital and enterprise sufficient to accomplish the object. 4. When liability limited, capital to be paid up, and parties to be liable for double that amount; no transfer of shares, except to parties equally solvent. 11. Parliament to deal with the cases as they arise. 12. In life assurance societies reserve fund to be provided out of profits. 18. If three-fourths of capital lost, compulsory dissolution. 20. Registration of names of limited partners. 21. Board of Trade to regulate examination of accounts.

[To be continued.]

## NEW RULES OF THE COMMON LAW COURTS.

UNDER THE COMMON LAW PROCEDURE ACT, 1854.

*Michaelmas Vacation, 1854.*

It is ordered, That the practice to be observed in the Superior Courts of Common Law at Westminster, with respect to the matters hereinafter-mentioned, shall be as follows;

That is to say,

1. The provisions as to Pleadings and Practice contained in the Common Law Procedure Act, 1852, and the Rules of Practice of the Superior Courts of Common Law made the 11th January, 1853, and also the Rules of Pleading which came into operation on the 1st day of Trinity, 1853, so far as the same are or may be made applicable, shall extend and apply to all proceedings to be had or taken under the Common Law Procedure Act, 1854.

2. Every affidavit to be hereafter used in any cause or civil proceedings in any of the said Superior Courts of Common Law shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph



shall be numbered consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule. This rule not to be in force till the first day of Easter Term next.

|                 |                 |
|-----------------|-----------------|
| CAMPBELL.       | C. CRESSWELL.   |
| JOHN JERVIS.    | W. BRLE.        |
| FRED. POLLOCK.  | SAML. MARTIN.   |
| J. PARKE.       | CHAS. CROMPTON. |
| E. H. ALDERSON. | R. B. CROWDER.  |

27th November, 1854.

#### FORMS OF PROCEEDINGS.

The Forms of Proceedings contained in the Schedule to the Order may be used in the cases to which they are applicable, with such alterations as the nature of the action, the description of the Court in which the action is depending, the character of the parties, or the circumstances of the case, may render necessary; but any variance therefrom, not being in matter of substance, shall not affect their validity or regularity.

The Forms in the Schedule to the Order are as follow:—

1. Issue of fact to be tried by a Judge without a jury.
2. Subpoena thereon and in other cases.
3. *Nisi Prius* record therein.
4. *Postea* therein, on a verdict for plaintiff on all the issues, where the cause is tried in London or Middlesex, and where the defendant appears at the trial.
5. The like, where the trial was at the assizes.
6. The like, where one issue is found for the plaintiff and another for the defendant, the latter going to the whole action.
7. Judgment thereon for plaintiff.
8. Execution thereon.
9. Writs of execution where the Court or a Judge decides on matters of account.
10. Writs of execution where matter of account is referred to and decided on by an arbitrator, officer of the Court, or County Court Judge.
11. Special case for the opinion of the Court under section 4 of the Common Law Procedure Act, 1854, where the allowance or disallowance of a particular item or items depends on a question of law.
12. Issue to be tried by a jury where the Court or Judge has directed it, under section 4, where the allowance or disallowance of a particular item or items depends on a question of fact.
13. *Postea* thereon.
14. Special case stated under section 5 of the Common Law Procedure Act, 1854.
15. Judgment thereon when a judgment has been ordered.
16. *Postea*, where the Judge upon the trial of an issue in fact before him under section 1,

directs an arbitration as to part of the claim under section 6 of the Common Law Procedure Act, 1854.

17. Writ of *habere facias possessionem* on a rule to deliver possession of land pursuant to an award.

18. Judgment for the plaintiff on a special case stated under section 32 of the Common Law Procedure Act, 1854.

19. Judgment of affirmance by Court of Error in Exchequer Chamber on a special case.

20. Judgment of reversal in the like case.

21. Judgment of Court of Appeal in Exchequer Chamber on a disposal of the appeal in the plaintiff's favour where judgment for him had been given in the Court below, under the 41st and 42nd sections of the Common Law Procedure Act, 1854.

22. *Fi. fa.* against garnishee, under the 63rd section of the Common Law Procedure Act, 1854, where debt not disputed or garnishee does not appear.

23. *Ca. sa.* in the like case.

24. Writ against garnishee to show cause why the judgment creditor should not have execution against him for the debt disputed by him.

25. Declaration thereon.

26. Plea thereto.

27. Issue thereon.

28. *Postea* thereon.

29. Judgment for plaintiff therein.

30. *Fi. fa.* therein.

31. *Ca. sa.* therein.

32. Judgment for plaintiff after verdict that a mandamus do issue, under section 71 of the Common Law Procedure Act, 1854.

33. Writ of inquiry to ascertain the expense incurred by the doing of an act, and for the doing of which a mandamus was issued.

34. Writ of execution in detinue, under section 78 of the Common Law Procedure Act, 1854, for the return of the chattel detained, and for a distringas until returned, separate from a writ for damages or costs.

35. The like, but, instead of a distress until the chattel is returned, commanding the sheriff to levy on defendant's goods the assessed value of it.

36. Indorsement on writ of summons of claim of a writ of injunction under 79 of the Common Law Procedure Act, 1854.

#### AUCTION DEPOSITS ON THE SALE OF ESTATES IN LONDON.

We laid before our readers, some time ago, the Circular sent by the Incorporated Law Society to the London Solicitors, recommending that in future the deposits on the sale of estates in London should be paid by the auctioneers into a bank to be agreed on between the vendor and purchaser, in order that such deposit might not only be safe but bear interest.

This regulation was also forwarded to the

London auctioneers who are usually employed in the sale of estates.

It appears that the practice in London of leaving deposits in the auctioneers' hands does not prevail in the country. Information to that effect has been received from Liverpool and Manchester, and from Edinburgh, and other large cities and towns. It was suggested to the Council of the Incorporated Law Society that the practice in London should be altered, and they issued the general regulation to which we have referred,—leaving, of course, to the Solicitors and their clients to adopt the alteration or make any arrangement with the auctioneers they thought proper for the vendor's interest.

We understand that one or two auctioneers have thought proper to protest against the regulation as uncalled for and reflecting on their respectability. No such reflection could be intended. The auctioneers in general have not drawn any such inference. It may probably be convenient sometimes to leave the present practice undisturbed, but it is clearly right that the deposit should bear interest and be paid to the vendor on the completion of the contract; or, if there be a defect in the title, refunded to the intended purchaser with interest.

If the auctioneers be insufficiently remunerated for their skill and labour by their *ad valorem* or *per centage* charge, they should increase it, and not depend on the interest made out of the deposits. It will be well, however, for the auctioneers to consider whether their *per centage* (exclusive of the advantage of the deposits) does not exceed the remuneration paid to solicitors, and we presume they will not place their services at a higher value than is accorded to that branch of the Legal Profession.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### FRIENDLY SOCIETIES DISCHARGE ACT.

17 & 18 VICT. c. 56.

An Act to make further Provisions in relation to certain Friendly Societies. [31st July, 1854.]

WHEREAS certain friendly societies were established and enrolled under the Acts passed in the 10 Geo. 4, c. 56, and the 4 & 5 Wm. 4, c. 40, relating to friendly societies, or under one of them: and whereas the scope and operation of friendly societies since the passing of the said Acts have been limited by law in respect to the amount for which policies of assurance

payable on the death of members of such societies may be granted; but some of the said societies, established as aforesaid, and which grant or effect policies of assurance payable on death, have not been so limited, and such last-mentioned societies have therefore been excluded the benefit of certain provisions and privileges made for and granted to friendly societies in respect to exemption from stamp duties and otherwise; and it is desirable that there should be special provisions made with respect to such of the said societies so excepted and excluded as aforesaid: be it therefore enacted, as follows:—

1. This Act shall relate to and include such of the said societies only as grant and effect policies of assurance payable at death exceeding the sum of 1,000*l.*; and from and after the passing of this Act the said societies shall cease to be friendly societies, and shall not be affected by the provisions of any Act passed in the present or any future Session of Parliament relating to friendly societies, unless therein expressly named.

2. The several provisions contained in the Acts relating to friendly societies which were wholly or in part in force on the first day of this present Session of Parliament with respect to the societies intended to be affected and provided for by this Act, save and except the 37th and 51st sections of the Act of the 13 & 14 Vict. c. 115, shall, so far as they now affect such societies, remain and be in force and unrepealed with respect to the said societies, except as is hereinafter provided.

3. No exemption from any of the duties granted by any Act or Acts relating to stamp duties shall, from and after the passing of this Act, extend or be construed to extend to any of the societies intended to be affected and provided for by this Act; and it shall not be lawful for such societies, after the passing of this Act, to assure the payment of any money on the death of any member or person whomsoever to any nominee of such member or person, but only to the person or persons effecting and contracting for any assurance with the said societies respectively, or to his, her, or their executors, administrators, or assigns.

4. The societies intended to be affected and provided for by this Act may carry on, transact, and effect all the business and purposes which have been from time to time and are duly specified in and allowed by the enrolled or certified rules of the said societies respectively, and also may grant, make or effect all such assurances on lives, survivorships, contingencies, and events dependent on or connected with life or otherwise as may by law be made or effected, and may make such new rules or alterations in rules as shall not be repugnant to law, without being required to submit the same to the Registrar of Friendly Societies, and shall not be required to transmit to such registrar any statement or return of sickness or mortality or of assets or liabilities.

5. The trustees of the several societies intended to be affected and provided for by this

Act may from time to time lay out and invest the funds of such societies, as well in the manner, and upon the stocks, funds, and other securities, which are now authorised by law with regard to such societies, as also in or upon exchequer bonds and bills, and any stocks, funds, or securities guaranteed by the Government of Great Britain, and bonds of the city of London, or on mortgage, or in the purchase of any reversionary, contingent, or other estate or interest in any freehold, leasehold, or copyhold property in Great Britain or Ireland, or of any such estate or interest in any of the stocks, funds, or securities hereinbefore-mentioned and referred to respectively, or of any such estate or interest in any sum or sums of money secured upon any such real and personal estate as aforesaid, or upon the security of any rates, tolls, duties, assessments, bonds, stocks, debentures, or other securities of any persons, body, or company authorised by Act of Parliament, charter, or otherwise to be raised, levied, or mortgaged, and also upon security of any life policy or policies, although the amount of the loan may exceed the then present value thereof, provided the premiums on such policy or policies and the interest of the loan be collaterally secured by or upon some of the securities hereinbefore-mentioned, and shall and may from time to time vary and transpose the said securities so purchased, and sell the same respectively.

6. All powers and provisions of any Act or Acts of Parliament for ordering and enforcing the attendance of witnesses before an arbitrator under any reference made a rule of Court, and for punishing disobedience to any such order, shall apply to any arbitration of any difference or dispute under or pursuant to the rules of any of the societies intended to be affected and provided for by this Act, for which purpose a copy of the resolution of the board of directors, or committee, or board of management of any such society, authorising such reference, signed by the chairman or any director or the secretary of such society, may be made a rule of any of her Majesty's Courts at Westminster.

7. The trustees for the time being of any society intended to be affected and provided for by this Act may from time to time, with the consent of the board of directors, or board or committee of management thereof, purchase, hire, or take upon lease, and adopt and furnish, any buildings for the purpose of holding the meetings and transacting the business of such society, and shall hold the same in trust for the use of such society, and may, with such consent as aforesaid, mortgage, sell, exchange, or let the same or any part thereof; and the receipt in writing of such trustees shall be a valid and legal discharge for the money arising from any such mortgage, sale, exchange, or lease, and for any other moneys payable to them by virtue of this Act; and no purchaser, mortgagee, lessee, assignee, or other person shall be bound to ascertain or show whether any such consent shall have been given as

aforesaid, or be answerable for the misapplication or nonapplication of the moneys in any such receipt expressed to be received, or be bound to see to the application thereof: provided always, that any building which now belongs to any such society may be held and dealt with in the same manner as if it had been acquired under or by virtue of this Act.

8. It shall not be lawful for the trustees of any friendly society coming under the provisions of this Act to make any investment of the funds of such society either in a savings' bank, or with the Commissioners for the Reduction of the National Debt; provided always, that where the funds or any part thereof of any such friendly society shall be invested in a savings' bank or with the said Commissioners, such funds shall be withdrawn from such savings' bank or from the said Commissioners by the said trustees within the space of 12 months after the passing of this Act, if required by the said Commissioners.

9. In citing this Act in other Acts of Parliament, and in legal proceedings and instruments, it shall be sufficient to use the expression "The Friendly Societies Discharge Act, 1854."

10. This Act shall extend to Great Britain and Ireland, and the Islands of Guernsey, Jersey, and Man.

#### FRIENDLY SOCIETIES ACTS CONTINUANCE AND AMENDMENT.

17 & 18 VICT. c. 101.

An Act to continue and amend the Acts now in force relating to Friendly Societies.

[10th August, 1854.]

Whereas the Act passed in the 13 & 14 Vict. c. 115, intituled "An Act to amend and consolidate the Law relating to Friendly Societies," was continued in force for a period therein limited by an Act passed in the 15 & 16 Vict. c. 75: and whereas the said Acts will expire at the end of the present Session of Parliament, and it is expedient the same shall be further continued: be it enacted, as follows:—

1. The said Act of the 13 & 14 Vict. c. 115, shall be further continued to the 1st day of October, 1855, and to the end of the then next Session of Parliament.

2. All transcripts of the rules of friendly societies now filed with the rolls of the sessions of the peace in any county, riding, or division of a county shall be taken off the file, and sent to the registrars, who shall keep the same in such manner as shall be from time to time directed by one of her Majesty's Principal Secretaries of State.

#### NOTICES OF NEW BOOKS.

*An Elementary View of the Proceedings in an Action at Law.* By JOHN WILLIAM SMITH, Esq., late of the Inner Temple, Barrister-at-Law, Author of "Leading Cases." 5th Edition. By EDWARD

Wise, Barrister-at-Law. Stevens & Norton. 1854. Pp. 321.

In the preface to this fifth edition of the late Mr. J. W. Smith's *Elementary View of an Action at Law*, Mr. Wise, its editor, states that it is based upon that last edited by the Author,—such alterations and additions being made as seemed requisite to adapt the work to the wants of the student. Some portions of the original work have been advisedly retained, although not describing the existing practice, because the student will find it useful to connect the past and the present.

Since the decease of the original Author, the two Common Law Procedure Acts of 1852 and 1854 have effected great alterations, not only in the *practice* of the Courts, but in their *jurisdiction*; and these alterations have been ably and concisely embodied by Mr. Wise in the new edition.

The former editions of this *Elementary View of an Action at Law* have been long favourably known to the Profession, and it will therefore be unnecessary to set forth in detail the scope and plan of the work. It may be sufficient to observe, that it is divided under the following general heads:—  
1. The Superior Courts. 2. Their jurisdiction and mode of exercising it. 3. Forms of action and preliminaries to the commencement of an action. 4. Proceedings to trial. 5. The trial. 6. Proceedings to judgment. 7. Judgment. 8. Costs. 9. Error. 10. Execution. 11. Scire facias and revivor. 12. Arrest. 13. Ejectment. 14. Arbitration. 15. Replevin. The volume also contains elementary forms, forms of pleadings, forms under the rules of Hilary Term, 1853, and writs of execution.

It may be useful to submit to our readers the new jurisdiction and practice relating to *compulsory arbitrations*, as they are described by Mr. Wise, and this extract will afford an example of the manner in which the learned Editor has treated the new materials comprised in the present edition:—

“The proceedings by arbitration in general we do not propose to explain, but only so far as, under the Common Law Procedure Act, 1854, it is a compulsory mode of putting an end to an action. It has long been felt a grievance that oftentimes a cause was brought into Court, and the expenses of briefs and witnesses incurred, for no other result than a reference to arbitration, forced upon the parties, more or less willing, by the nature of the case or the strongly expressed opinion of the presiding Judge. There was no method, except by consent of both parties, of obtaining a decision by arbitration. Now by the 3rd section

of that Act, if, upon the application of either party at any time after the issuing of the writ, the Court or a Judge is satisfied that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, the Court or Judge, if they or he think fit, may decide such matter in a summary manner, or order it, either wholly or in part, to be referred to an arbitrator appointed by the parties, or to an officer of the Court, or, in country causes, to the Judge of any County Court, upon such terms as to costs and otherwise as such Court or Judge shall think reasonable; and the decision or order of such Court or Judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred. And by sect. 6, the Judge at the trial of any issue of fact before him, as Judge and jury, will have the same power of enforcing a compulsory reference, either as to all or part of the matters in dispute.

“If it appears to the Court or a Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the Court, or upon a question of fact fit to be decided by a jury, or by a Judge upon the consent of both parties, as already mentioned, the Court or Judge may direct a case to be stated, or an issue or issues to be tried; and the decision of the Court upon such case, and the finding of the jury or Judge upon such issue or issues, will be acted upon by the arbitrator as conclusive.

“The proceedings under the reference will, in general, be the same as upon a reference made by consent under a rule of Court or Judge's order; but it is expressly enacted, for the future, that in all references where the submission may be made a rule of Court, that is, by sect. 17, wherever the submission is by writing and does not show a contrary intention, the arbitrator may state a special case for the opinion of the Court, and the Court or a Judge may in such references, from time to time, remit the matters referred, or any of them, back to the arbitrator, upon such terms as may be thought fit (sect. 8). An award under a compulsory reference may, by leave of a Judge, be enforced at any time after seven days from publication, and will be enforced as a matter of course if no application to set it aside be made within the first seven days of the term next after the publication; and if a rule be granted on such application, then, immediately upon the rule being discharged, the award will be final between the parties (sect. 9). Such are the cases in which compulsory references may be obtained, independently altogether of any previously expressed intention of the parties. But, as is well known, it has been a common practice to insert in partnership and other agreements a clause, that any dispute arising between the parties should be referred to arbitration, a clause not worth the paper it was written upon, unless the parties remained in the same mind when the disputes had arisen.”

The legislature has, for the future, abrogated the technical rule of law, which precluded parties from ousting the Courts of Jurisdiction by any such previous agreement (see *Crisp v. Bambury*, 8 Bing. 394), and thereby has conferred a great boon upon the mercantile world.

"The 11th section of the Common Law Procedure Act, 1854, provides, that 'whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall nevertheless commence any action at law or suit in equity against the other party or parties, or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred, or any of them, it shall be lawful for the Court in which such action or suit is brought, or a Judge thereof, on application by the defendant or defendants, or any of them, after appearance and before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of the bringing of such action or suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to such Court or Judge may seem fit: provided always, that any such rule or order may at any time afterwards be discharged or varied as justice may require.'"

Sections 12, 13, and 14 provide against such references falling to the ground from the nonappointment or failure of arbitrators.

"Thus, if the document authorising the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator; or if any appointed umpire or third arbitrator refuse to act, or become incapable of acting, or die, and the parties or arbitrators respectively do not appoint a new one; then in every such instance any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator respectively; and if within seven clear days after such notice shall have been

served, no arbitrator, umpire, or third arbitrator be appointed, any Judge of any of the Superior Courts of Law or Equity at Westminster, upon summons to be taken out by the party having served such notice as aforesaid, may appoint an arbitrator, umpire, or third arbitrator, as the case may be, and such arbitrator, umpire, and third arbitrator respectively shall have the like power to act in the reference and make an award, as if he had been appointed by consent of all parties. So when the reference is or is intended to be to two arbitrators, one appointed by each party, either party, in case of the death, refusing to act, or incapacity of any arbitrator appointed by him, may substitute a new arbitrator; and if on such a reference one party fail to appoint an arbitrator, either originally or by way of substitution, for seven clear days after the other party shall have appointed an arbitrator, and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him shall be binding on both parties as if the appointment had been by consent; provided, however, that the Court or a Judge may revoke such appointment, on such terms as shall seem just. And when the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner.

"By sect. 15, 'The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and within three months after he shall have been appointed, and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party, but the parties may by consent in writing enlarge the term for making the award; and the Superior Court of which such submission, document, or order is or may be made a rule or order, or any Judge thereof, for good cause to be stated in the rule or order for enlargement, from time to time may enlarge the term for making the award; and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed to be an enlargement for one month; and in any case where an umpire shall have been appointed he may enter on the reference in lieu of the arbitrator, if the latter shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party, or to the umpire, a notice in writing stating that they cannot agree.'"

It will be recollected, however, as Mr. Wise observes, that the parties may if they please, by express agreement, exclude the operation of the enactments as to the appointment or substitution of arbitrators or

umpires, and the time within which the award is to be made.

"Sect. 17. provides for making all written submissions rules of Court, unless the contrary intention appear, and regulates the making the submission a rule of one particular Court only; and where so, confining the jurisdiction over it to that Court. Lastly, the 16th section enacts, that, 'when any award made on any such submission, document, or order of reference as aforesaid, directs that possession of any lands or tenements, capable of being the subject of an action of ejectment, shall be delivered to any party, either forthwith or at any future time, or that any such party is entitled to the possession of any such lands or tenements, the Court of which the document authorising the reference is or is made a rule or order may order any party to the reference who shall be in possession of any such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorising the reference, to deliver possession of the same to the party entitled thereto, pursuant to the award; and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue, and possession shall be delivered by the sheriff as on a judgment in ejectment.'"

### LAW OF COSTS.

#### ALLOWANCE FOR DETENTION OF PARTY WITNESS IN HIS OWN CAUSE.

THE plaintiff, whose occupation was that of purser on board ship, was examined on his own behalf at the trial of an action, and it was sworn in the affidavit of increase, upon his having obtained a verdict, that he had been necessarily detained in this country ever since the commencement of the action for the purpose of giving evidence in the cause, and that his evidence was of such importance that the cause could not have been safely brought to trial in his absence. The Master made an allowance for his detention from the time of the rule *nisi* for a new trial, which had been obtained in Hilary Term, being granted, until it was discharged in the Easter Term following.

On a rule *nisi* being obtained for a review of the taxation, Lord Campbell, C. J., said,—“After much hesitation and great doubt, we have in this case come to the conclusion that the rule to review the taxation must be discharged. But we are anxious that it should be understood that we lay down no general rule, that, after a rule *nisi* for a new trial has been obtained, the witnesses may be detained at the cost of the losing party. The circumstances in

the present case are very peculiar. The plaintiff was a witness in his own cause; and his evidence at the trial was material; his regular employment was one which required him to be absent from this country: after he had obtained a verdict, a rule *nisi* was granted for a new trial, which was ultimately discharged. The Master, on taxation made the plaintiff an allowance from the time the rule was granted till it was discharged, but only on the ground that the plaintiff was a necessary witness in his own cause; that he could not possibly be ready to give evidence on the second trial, if one had been ordered, unless he remained in this country; and that his remaining here deprived him of his ordinary means of earning subsistence by going abroad and that he could not earn anything here. Under these circumstances, we think that this was an expense occasioned by the defendant's resistance, and that it may properly be considered part of the costs of the rule for a new trial. We do this, taking it to be found, as facts, by the Master that the evidence of the plaintiff would be material, that in order to give it the detention was necessary, and that the detention deprived the plaintiff of the means of subsistence: except under such circumstances, the allowance ought not to be made. We must guard carefully against an abuse by which parties in a cause may, as witnesses, obtain an allowance which they are not entitled to as parties. Under such peculiar circumstances as the present, the allowance was right; but we most earnestly desire that it may not be considered a general rule that parties, if witnesses, are to have an allowance for their attendance.” *Dowdell v. Australian Royal Mail Steam Navigation Company*, 3 Ellis & B. 902.

It may be useful, on this important question, to note the previous decisions bearing on the subject:—

In *Howes v. Barber*, Q. B., Trinity Term, 1853, the Court said,—“The reasonable expenses to which the plaintiff is put by being obliged to attend and be examined as a witness to enforce payment of a just demand, or to such redress for an injury, should be thrown on the wrong doer.” In the prior decision of *Mount v. Larkins*, 8 Bing. 195, the Court of Common Pleas refused to order an increase in the allowance by the prothonotary, who had only made the witness an allowance up to the first trial, but the reason given by the Court was, that the new trial, if granted, would be confined to a point on which the evidence of the witness was not material.

The following decisions relate to this subject:—

*Tremain v. Barrett*, 6 Taunt. 88, where it was decided that if a witness is *bond fide* sent for from a foreign country for the sake of his testimony in an intended action, though the writ is not sued out until after his arrival, the plaintiff is entitled in that cause to the costs of bringing him over, his subsistence, and compensation for his loss of time spent here pending the suit for the purposes thereof, and to the costs of his return.

But if the witness, being sent for to give evidence in one action, the plaintiff uses his testimony in another action against a different party, and relaxes his diligence in the first, he is entitled in the second action to the costs only of the witness's subsistence and detention for the purpose of the second action, but not of his voyage hither or of his return.

*Lonergan v. Royal Exchange Assurance*, 7 Bing. 725. A successful party is entitled to the expense of a foreign witness material to his cause, and of detaining him in this country to await the trial of the cause, although opportunity is afforded of examination upon interrogatory.

In the report of the case by Dowling (1 Dowl. P. C. 223), it appears that there was no trial. (See also report in 5 M. & P. 447.)

*Sturdy v. Andrews*, 4 Taunt. 697, where it was held that the Court will allow the costs of detaining a foreigner here to give evidence on a trial, computed from the day of the writ sued out to the day of trial.

*Berry v. Pratt*, 1 B. & C. 276. The Master was justified in allowing subsistence from the service of the writ until the trial to a seafaring man who had been detained in England in order to give evidence.

*Schimmell v. Lousada*, 4 Taunt. 694. A plaintiff, who brings over a foreign witness hither, in order to judge by his testimony whether there is ground to bring an action, and afterwards sues out a writ and examines the foreigner at the trial, may be allowed the costs of detaining him here from the time of the writ sued out until the trial, and a reasonable sum for his sustenance here during the same time, but not the costs of his passage hither or of his return.

## CONSTRUCTION OF STATUTES.

### EQUITY JURISDICTION IMPROVEMENT ACT.

#### EVIDENCE UNDER S. 54 IN INQUIRIES UNDER DECREE.

THE meaning of the 15 & 16 Vict. c. 86, s. 54, is, that "Where vouchers have been lost, or accounts cannot be taken in the ordinary course, the Court may give directions as to the mode in which the accounts shall be taken, and as to the evidence which may be adduced in support of the items: and in truth, according to my recollection, the clause referred to only established a practice which had been

already adopted.<sup>1</sup> The Court always used to exercise this power, but if, upon a cause coming on for further directions, it appeared that justice had not been done in the Master's office, the case was sent back to the Master with special directions. Here there is no contract that the ordinary evidence cannot be had. It may be expensive, but I am not prepared to say that this Court can exercise the power of dispensing with the ordinary evidence for the mere purpose of saving expense. I think that the Court is bound to see whether the matter requires special directions to be given before it gives any such directions. This does not appear to me to be a case coming within the meaning of the Act. \* \* \* I also doubt whether the Act can operate retrospectively." Per Lord Justice Turner, in *Lodge v. Prichard*, 3 De Gex, M'N. & G. 906.

#### ORDER UNDER S. 45 FOR ADMINISTRATION OF BEQUEST BY MARRIED WOMAN UNDER POWER.

Held, that the Master of the Rolls, or a Vice-Chancellor, has jurisdiction under the 15 & 16 Vict. c. 86, s. 45, to make an order in Chambers upon a summons to administer the effects bequeathed by a married woman under a power contained in a deed. *Sewell v. Ashley*, 3 De G., M'N. & G. 933.

## NOTES OF THE WEEK.

### ADMIRALTY COMMISSIONERS.

The Judge of the Admiralty Court has appointed *Robert Townsend Hippley*, of the City and County of Bristol, Gent., to be a Commissioner to administer Oaths in Admiralty for the city and county of Bristol.—From the *London Gazette* of 21st Nov.

The Judge of the Admiralty Court has also appointed *William Henry Reece*, of Birmingham, in the County of Warwick, Gent., to be a Commissioner to administer Oaths in Admiralty for the Town of Birmingham.—From the *London Gazette* of Nov. 28.

### SOLICITORS ELECTED AS MAYORS.

*Carnarvon*, Mr. Hugh Jones.  
*Chesterfield*, Mr. Drabble.  
*Chester*, Mr. W. H. Brown.  
*Dover*, Mr. W. H. Payn.  
*Honiton*, Mr. R. H. Aberdein.  
*Ludlow*, Mr. Anderson.  
*Leominster*, Mr. J. Bedford.  
*Ruthin*, Mr. J. Peers, sen.  
*Sunderland*, Mr. A. J. Moore.  
*Tamworth*, Mr. J. Shaw.  
*Wigan*, Mr. Taylor.

<sup>1</sup> *Brown v. De Tastet*, Jac. 284.

NEW MEMBERS OF PARLIAMENT.

James O'Brien, Esq., for Limerick City, in the room of Robert Potter, Esq., deceased.

The Right Hon. Richard Edmund St. Lawrence Boyle, commonly called *Viscount Dungarvon*, for Frome, in the room of Lieutenant-Colonel the Hon. Robert Edward Boyle, deceased.

COLONIAL LAW APPOINTMENT.

THE Queen has been pleased to appoint Robert Mooney, Esq., to be Registrar of Deeds

and Keeper of Plans for the Island of Prince Edward.—From the *London Gazette* of 24th Nov.

MEETING OF PARLIAMENT.

It was this 27th day of November ordered by her Majesty in Council, that the Parliament which stands prorogued to *Thursday*, the 14th *December* next, shall assemble and be holden for the dispatch of divers urgent and important affairs, on Tuesday, the 12th day of December next.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Vice-Chancellor HALL.

In re Arbitration between Lord and Copper Miners' Company. Nov. 25, 1854.

COMMON LAW PROCEDURE ACT, 1854.—APPOINTMENT OF UMPIRE UNDER s. 12.—JURISDICTION.

*Arbitrators were appointed pursuant to a private Act of Parliament, and the submission was made a rule of Court on July 11 last. Upon their disagreeing and being unable to concur in the appointment of an umpire, held that this Court had jurisdiction under the 17 & 18 Vict. c. 125, s. 12, to make the appointment, although the reference was by private Act of Parliament.*

THIS was a motion under the 17 & 18 Vict. c. 125, s. 12,<sup>1</sup> for the appointment of an umpire in this arbitration, which was directed by s. 13 of the company's Act, 1851, in the manner provided by the 8 & 9 Vict. c. 16 (Companies' Clauses' Consolidation Act, 1845). Arbitrators

<sup>1</sup> Which enacts, that "if, in any case of arbitration, the document authorising the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;" "or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator," "then in every such instance any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator respectively; and if, within seven clear days after such notice shall have been served, no arbitrator, umpire, or third arbitrator be appointed, it shall be lawful for any Judge of any of the Superior Courts of Law or Equity at Westminster, upon summons to be taken out by the party having served such notice as aforesaid, to appoint an arbitrator, umpire, or third arbitrator, as the case may be, and such arbitrator, umpire, or third arbitrator respectively shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties."

had been accordingly appointed and the submission made a rule of Court on July 11 last, and on their having disagreed and being unable to concur in the appointment of an umpire under s. 130 of the 8 & 9 Vict. c. 16, this application was made.

*Roll and Bovill*, in support, cited *Freeman v. Moyes*, 1 Ad. & E. 338, and s. 131<sup>2</sup> of the Companies' Clauses' Consolidation Act.

*Willcock* for the company, contra.

The Vice-Chancellor said, that the case cited was a strong one, but had not been altogether approved of by *Parke, B.*, in *Pinkhorn v. Sonster*, 16 Jur. 1002. This Act was highly remedial in respect of procedure; and where the question was simply one of procedure, and no penalty by way of costs was imposed, it would operate on actions already commenced, as had been the case with the 15 & 16 Vict. c. 86, and it was for the benefit of parties that no impediment should be thrown in the way. The words in s. 12, "in any case of arbitration," must be intended to refer to any case, whether prospective or retrospective, and it would not be infringing Lord Bacon's maxim (*nova constitutio futuris formam imponere debet, non preteritis*) by giving the parties the benefit of the enactment. The machinery provided by the Companies' Clauses' Act did not meet the present case, as the appointment of an umpire by the Board of Trade only applied to the case of a railway company, and the words so limiting it could not be rejected as suggested in the argument. Then, as to the suggestion that there was no "document" authorising the reference, although it would be a very strong construction to hold that the word included a private Act of Parliament, yet the 12th section was applicable to any case of arbitration, and therefore where there was merely a parol refer-

<sup>2</sup> Which enacts, that "if, in either of the cases aforesaid, the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for the Board of Trade, if they shall think fit, in any case in which a railway company shall be one party to the arbitration, on the application of either party to such arbitration, to appoint an umpire."



ence. An order would accordingly be granted as asked.

#### Court at Queen's Bench.

*Regina v. Recorder of Bristol.* Nov. 24, 1854.

RECORDER. — JURISDICTION ON APPEAL FROM JUSTICES REFUSING PUBLIC HOUSE LICENCE.

*Held, that the recorder has not jurisdiction under the 5 & 6 Wm. 4, c. 76, to hear an application for the licence of a public house, upon its refusal by the Sessions for the city.*

THIS was a rule nisi on the Recorder of Bristol to hear an application for the licence of a public house, upon its being refused by the Sessions for the city.

The *Attorney-General* showed cause against the rule; which was supported by *Prideaux*, in support, referring to the 5 & 6 Wm. 4, c. 76, (the *Municipal Corporations' Act*).

The *Court* held, that the recorder had no jurisdiction in the matter, and discharged the rule accordingly.

*Bewlay v. Great Northern Railway Company.* Nov. 25, 1854.

ACTION IN FORMA PAUPERIS.—TAXATION OF COSTS.—COUNSEL'S FEES AND ATTORNEY'S COSTS.

*Held, discharging without costs a rule nisi for the review of the Master's taxation, that in an action by a plaintiff in forma pauperis, there can be no allowance made for the counsel's fees or attorney's trouble, under the 121st rule of Hilary Term 1853, although the Judge certified for costs, and the plaintiff obtained a verdict for more than 5l.*

THIS was a rule nisi on the Master to review the taxation of the costs of the plaintiff in this action, who sued in *forma pauperis*, and had recovered a verdict with 150*l.* damages. It appeared that the Master had, upon taxation, refused to allow more than the costs out of pocket, notwithstanding Lord Campbell, C. J., had certified for the costs, and he also declined to allow anything for counsel's fees or the attorney's trouble.

*Bovill* showed cause, and referred to the 11 Hen. 7, c. 12, which enacts, that "every poor person or persons, which have, or hereafter shall have cause of action or actions against any person or persons within this realm, shall have, by the discretion of the Chancellor of this realm for the time being, writ or writs original, and writs of subpoena, according to the nature of their causes, therefore paying nothing to your highness for the seals of the same, nor to any person for the writing of the same writ or writs to be hereafter sued; and that the said Chancellor for the time being shall assign such of the clerks which shall do and use the making and writing of the same writs, to write the same ready to be sealed, and also learned counsel and attorneys for the same, without any reward

taken therefore; and after the said writ or writs be returned, if it be afore the king in his bench, the justices there shall assign to the same poor person or persons, counsel learned, by their discretions, which shall give their counsels, nothing taking for the same: and likewise the justices shall appoint attorney and attorneys for the same poor person or persons, and all other officers requisite and necessary to be had for the speed of the said suits to be had and made, which shall do their duties without any reward for their counsels, help, and business in the same:" and to the 121st rule of Hilary Term, 1853, which directs, that "no fees shall be payable by a pauper to his counsel and attorney, nor at the offices of the Masters, or associates, or at the Judge's Chambers, or elsewhere, by reason of a verdict being found for such pauper exceeding 5*l.*

*Shee*, S. L., and *Torr* in support.

The *Court* said, that by the 11 Hen. 7, it was clear the services of counsel and attorney to a plaintiff suing in *forma pauperis* were to be rendered gratuitously. A practice had, however, since sprung up, under which a plaintiff, who recovered more than 5*l.* damages, was entitled to recover from the defendant the costs of his attorney's labour and counsel's fees; but this practice had led to most mischievous consequences, and defendants had in many instances been harassed by unfounded claims. It had consequently been found necessary to provide a remedy, and the rules of Hilary Term accordingly restored the matter as it stood under the Statute of Hen. 7: that in no case should the attorney or counsel receive any fee from a pauper plaintiff. It was not to be apprehended there would be any difficulty in a pauper obtaining justice where his claim was well-founded, but it was to be hoped that an end would be put to the frightful evil by certain unworthy members of a most honourable profession of prosecuting unfounded claims. The rule would therefore be discharged, but without costs.

*Regina v. Leapingwell.* Nov. 25, 1854.

PROHIBITION.—INTEREST OF JUDGE IN SUIT.—COSTS.

*A rule nisi for a prohibition on the Judge of a Borough Court against further proceeding in a suit in which a working men's literary society were plaintiffs, was discharged with costs, upon its appearing that the Judge was only a donor, and neither a member nor a subscriber to the society.*

THIS was a rule nisi for a prohibition on the Judge of the Cambridge Borough Court against proceeding in a suit brought by the Treasurer and Committee of the Barnwell Working Men's Literary Society, on the ground that he was interested. It appeared that he had given a donation of one guinea to the funds of the institution, and was therefore entitled, as an honorary member, under this rule, to introduce a working man into the society's rooms.

*Lusk* showed cause against the rule, which was supported by *Naylor*.

The Court said that there was a wide difference between a donor and a subscriber or member of the society, and the rule must be discharged, with costs.

#### Court of Common Pleas.

*Huggett*, app.; *Lewis*, resp. Nov. 23, 1854.

#### REGISTRATION OF VOTERS.—NOTICE OF OBJECTION.—DESCRIPTION OF LIST.

*The notice of objection to a voter described him as in the list "under the Reform Act." There were two lists prepared by the overseers, the one of persons entitled to vote under the old franchise, and the other under the new franchise under the Reform Act, 2 & 3 Wm. 4, c. 45: Held, that the notice was sufficient, and an appeal from the decision of the revising barrister allowing the objection was dismissed.*

It appeared on this appeal from the decision of the revising barrister for Westminster, that two lists had been made out by the overseers of persons supposed to be duly qualified to vote, the one of those entitled to vote under the old franchise, and the other under the new franchise under the Reform Act (2 & 3 Wm. 4, c. 45). Notice of objection had been given to a voter named *Alford*, who was described as being in the list "under the Reform Act; and the barrister having held this notice sufficient and disallowed the claim, this appeal was presented.

*Whitmore* in support; *Macnamara*, contra.

The Court said, that it was only requisite to describe the list, and that it was sufficiently described in the notice, and dismissed the appeal accordingly.

*Astbury*, app.; *Henderson*, resp. Nov. 23, 24, 1854.

#### REGISTRATION OF VOTERS.—QUALIFICATION.—YEARLY VALUE OF 40s.

*A claimant to vote had paid 150l. for two plots of land of a building society, which he could let for 15l. a year on building lease, but he had refused to do so: Held, that he was nevertheless entitled to vote, the qualification being of the value of 40s. a year.*

THIS was an appeal from the decision of the revising barrister for the Eastern Division of Surrey, disallowing the claim of the appellant, who had purchased two plots of land near Putney for 150l. from a freehold land society, and which would, if let on a building lease, be worth 15l. a year. It appeared that the appellant had refused an offer to that amount, and that the land was lying unoccupied and unproductive. The revising barrister had rejected the claim, referring to the 8 Hen. 9, c. 7.

*Byles*, S. L., and *Macnamara*, for the appellant, cited *Boonish*, app., *Overseers of Stoke*, resp., 11 C. B. 20; *Colvill*, app., *Wood*, resp., 2 C. B. 240.

*Corner*, for the respondent, referred to *Rees v. Mast*, 6 T. R. 154; *Rees v. Attwood*, 6 B. & C. 277; *Regina v. Westbrook*, 10 Q. B. 178.

The Court said, there was abundant evidence that the plot was worth more than 40s. a year, and the appellant had paid 150l. for it, which would produce more than 40s. a year. The rule was, that a thing was worth what it would fetch in the market, and in the present case it was only through the appellant's obstinacy that 15l. a year was not realised for it. The vote must therefore be allowed, and judgment be for the appellant.

*Gittens v. Symes*. Nov. 24, 1854.

#### COMMON LAW PROCEDURE ACT, 1854.—RULE NISI FOR INJUNCTION.—SHOWING CAUSE.

*Held, that upon a rule nisi being granted, for an injunction to restrain the defendant from continuing to infringe a patent, obtained by the plaintiff, under the 17 & 18 Vict. c. 125, s. 82, cause cannot be shown at Chambers.*

*Semble, that pending such cause being shown, an account may be directed, as in Equity.*

THIS was an action to recover damages from the defendant, for selling a patent obtained by the plaintiff, for an improved money till. Notice had been served of a motion, under the 17 & 18 Vict. c. 125, s. 82,<sup>1</sup> for an injunction to restrain such infringement and sale, and a rule nisi had been granted.

*Miller*, S. L., asked for cause to be shown at Chambers.

The Court said, that as the present was the first application under the Act, cause could not be shown at Chambers, and that possibly an account might be directed, as in Equity, pending cause being shown.

#### Court of Exchequer.

*Drayson v. Andrews*. Nov. 25, 1854.

#### COMMON LAW PROCEDURE ACT 1854.—RULE NISI FOR NEW TRIAL, FORM OF.—SETTING OUT GROUNDS.

*Held, that it is insufficient in a rule nisi for a new trial, granted on affidavits, to state*

<sup>1</sup> Which enacts, that "if shall be lawful for the plaintiff at any time after the commencement of the action, and whether before or after judgment, to apply, ex parte, to the Court or a Judge for a writ of injunction to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract or injury of a like kind, arising out of the same contract, or relating to the same property or right; and such writ may be granted or denied by the Court or Judge upon such terms as to the duration of the writ, keeping an account, giving security, or otherwise, as to such Court or Judge shall seem reasonable and just.

that it has been granted on the facts set forth in the affidavits annexed, but it should, under the 17 & 18 Vict. c. 125, s. 33, state shortly the facts.

THIS was a rule nisi granted on affidavits for the new trial of this action.

*M. Chambers* and *Hawkins* took a preliminary objection to the form of the rule, which merely stated it had been granted on the grounds set forth in the affidavits annexed, and omitted to set them out in accordance with the 17 & 18 Vict. c. 125, s. 33, which enacts, that "in every rule nisi for a new trial or to enter a verdict or nonsuit, the grounds upon which such rule shall have been granted shall be shortly stated therein."

*Knowles* and *Griffiths* in support.

The Court said, that the ground must be set out in the rule, but that under the circumstances the rule would be enlarged until next Term, and be amended in the meantime.

*Honeyball v. Blumer.* Nov. 25, 1854.

#### INFRINGEMENT OF PATENT.—COSTS OF PLEAS AND OBJECTIONS ON NONSUIT.

*The plaintiff in an action to recover damages for the infringement of a patent was nonsuited, and the defendant did not prove his particulars of objection as to prior user: Held, refusing a rule for the review of the taxation of the costs, that he was not entitled to recover them under the 15 & 16 Vict. c. 83, s. 43, as the Judge did not certify their proof.*

*Semble, the defendant should insist on proving his pleas and objections before the nonsuit is recorded.*

THIS was an action to recover damages for the infringement of a patent, to which the defendant pleaded that the alleged invention was not new, and gave in his particulars of objection the names of certain persons by whom he could prove a prior user. On the trial before *Martin, B.*, the plaintiff was nonsuited, and on the taxation the Master disallowed the costs incurred by the defendant in preparing his particulars of objection, on the ground that the Judge had not certified their proof under s. 43 of the 15 & 16 Vict. c. 83, which enacts, that "in taxing the costs in any action in any of her Majesty's Superior Courts at Westminster after the passing of this Act for infringing letters patent, regard shall be had to the particulars delivered in such action, and the plaintiff and defendant respectively shall not be allowed any costs in respect of any particular, unless certified by the Judge before whom the trial was had, to have been proved by such plaintiff or defendant respectively, without regard to the general costs of the cause." This rule nisi had thereupon been obtained for a review of the taxation.

*Sir F. Theiger* and *Webster* showed cause; *M. Chambers* and *Russell* in support.

The Court said, that the object of the Act was to keep within reasonable limits the costs to which parties in patent cases might put their opponents by setting up numerous and untenable objections on either side. It might be that the statute did not contemplate the termination of an action other than by the verdict of the jury, and that the defendant must insist, before a nonsuit was recorded, on proving his pleas and objections. As, therefore, there had been no certificate, the rule must be discharged.

### ANALYTICAL DIGEST OF CASES,

#### SELECTED AND CLASSIFIED.

#### House of Lords.

#### APPEALS.

#### AGREEMENT.

*Consideration.—Promise.*—"Employ and retain" solicitor.—*Pleading.*—A count in a declaration in assumpsit set forth an agreement between an attorney and solicitor and a company, that "from January then next, the plaintiff, as the attorney and solicitor of the company, should receive a salary of 100*l.* per annum, in lieu of rendering an annual bill of costs for general business transacted by him for the company as such attorney and solicitor; and should for such salary advise and act for the company on all occasions in all matters connected with the company" (the prosecuting and defending of suits, preparing bonds, and some other matters, for which he was to be allowed the regular charges, being excepted), "and that he should attend the secretary and the board of directors when required." The count then alleged, "That in consideration that the plaintiff had, at the request of the com-

pany, promised the company to perform his part of the agreement, the company promised the plaintiff to perform their part, and to retain and employ him as such attorney and solicitor of the said company, on the terms aforesaid." The count then alleged for breach that, "though for a small space of time the company did retain and employ the plaintiff as such attorney and solicitor on the terms aforesaid, and did pay him a small part of the salary, and though he was always ready and willing to advise and act for the company, and to accept the salary on the terms aforesaid, and in all other respects to fulfil the agreement on his part, yet the company disregarding, &c., did not, nor would, continue to retain or employ the plaintiff as such attorney or solicitor on the terms aforesaid, but on the contrary," in May, "wrongfully dismissed and discharged the plaintiff from such employment and retainer, and then and from thence hitherto have wholly refused to retain or employ him as such attorney and solicitor of the said company, and to pay him the salary as aforesaid, by reason of

which last-mentioned premises the plaintiff has wholly lost and been deprived of the salary, and also of divers great gains and profits which he might and otherwise would have derived from such employment in and about the prosecuting and defending of suits and preparing of bonds, &c." After a verdict for the plaintiff, with 200*l.* damages.

*Held*, that the count did sufficiently allege a consideration for the promise to retain and employ the plaintiff as attorney and solicitor, and that the consideration was not exhausted by the promise on the part of the company to perform the agreement. *Emmens v. Elderton*, 4 H. of L. Cas. 624.

Cases cited in the judgments: *Fawcett v. Cash*, 5 B. & Ad. 904; *Fewings v. Tisdal*, 1 Exch. 295; *Beckham v. Drake*, 2 H. of L. Cas. 606; *Lamp-leigh v. Brathwait*, Hobart, 105; 1 *Smith's Lead. Cas.* 67; *Aspdin v. Austin*, 5 Q. B. 671; *Dunn v. Sayles*, 5 Q. B. 685; *Pordage v. Cole*, 1 Wms. Saund. 319; *Sykes v. Dixon*, 9 A. & E. 693; *Pilkington v. Scott*, 15 M. & W. 657.

#### BILL OF EXCEPTIONS.

*See Misdirection.*

#### CONDITION PRECEDENT.

*See Lease.*

#### CONSIDERATION.

*See Agreement.*

#### COSTS.

*See Will.*

#### DETERMINATION OF LEASE.

*See Lease.*

#### "EMPLOY AND RETAIN" SOLICITOR.

*See Agreement.*

#### ESTATE FOR LIFE.

*Effect of imposing charge on tenant.*—Where an estate for life is given by clear words, the mere imposition of a charge on the tenant for life will not have the effect of enlarging the estate. *East v. Twyford and another*, 4 H. of L. Cas. 517.

Case cited in the judgment: *Denn v. Slater*, 5 T. R. 335.

#### EXECUTORY TRUST.

*See Will.*

#### "GRANDSON."

*See Will.*

#### "INHERIT."

*See Will.*

#### INSURANCE ON LIFE.

*Materiality of untrue answers.*—*Misdirection.*—*F.* applied to an insurance office to effect a policy on his life. He received a form of "proposal" containing questions requiring to be answered. Among these were the following:—"Did any of the party's near relations die of consumption or any other pulmonary complaint?" and "has the party's life been accepted or refused at any office?" To each of these questions *F.* answered "No." The answers were false. *F.* signed the proposal, and a declaration accompanying them, by

which he agreed "that the particulars mentioned in the proposal should form the basis of the contract." The policy mentioned several things which were "warranted" by *F.* The subjects of these two answers were not included in such warranty. The policy also contained a proviso, that "if anything so warranted shall not be true, or if any circumstance material to this insurance shall not have been duly stated, or shall have been misrepresented or concealed, or any false statements made to the company in or about the obtaining or effecting of this insurance," the policy should be void, and the moneys paid should be forfeited. In an action on the policy:

*Held*, reversing the judgments of the Courts of Exchequer and Exchequer Chamber in Ireland, that it was a misdirection to leave it to the jury to say, whether the answers to the two questions were material as well as false, and if not material, that the plaintiff was entitled to the verdict. The representation being part of the contract, its truth, not its materiality, was the question. *Anderson v. Fitzgerald*, 4 H. of L. Cas. 484.

Case cited in the judgment: *Beam v. Stupart*, Doug. 11, *et nota*.

#### LEASE.

*Notice to determine.*—*Condition precedent.*—*A.* became tenant to *B.* of a colliery and also of some farm land, at distinct rents. The lease contained very numerous covenants as to the payment of the rent, and as to the management of each property. The term created was for 42 years; but the tenant was to have liberty to put an end to the term, on giving 18 months' notice before the expiration of the first eight years, or of any subsequent three years. The proviso which gave the tenant this liberty, after describing the giving of the notice, contained these words:—"Then and in such case (all arrears of rent being paid, and all and singular the covenants and agreements on the part of the said lessees having been duly observed and performed), this lease, and every clause and thing therein contained, shall, at the expiration of the first eighth year, and thereafter at the expiration of any such third year, cease, determine, and be utterly void. \* \* \* But, nevertheless, without prejudice to any claim or remedy which any of the parties hereto may then be entitled to for breach of any of the covenants or agreements hereinbefore contained."

The Court of Exchequer had held that this proviso did not make the performance of all the covenants a condition precedent to the tenant's power to put an end to the lease. The Court of Exchequer Chamber held, that the proviso did make the performance of the covenants a condition precedent.

The Lords were equally divided, and so the judgment of the Exchequer Chamber was affirmed. *Grey and others v. Friar*, 4 H. of L. Cas. 565.

Cases cited in the judgments: *Pordage v. Cole*, 1 Saund. 320, *b.*; *Haya v. Bickerstaffe*, 2 Mod. 54; *Stavers v. Curling*, 3 Bing. N. C. 355;

*Porter v. Shephard*, 6 T. R. 665; *Rade v. Farr*, 6 Maule & S. 121; *Hyde v. Watts*, 12 M. & W. 254; *Heard v. Wadham*, 1 East, 630.

#### LIFE INSURANCE.

See *Insurance on Life*.

#### MANDAMUS.

*Railway bridge*.—Option under 8 & 9 Vict. c. 20, s. 46.—Under the 8 & 9 Vict. c. 20, s. 46, a railway company has the option, when its line of railway crosses a turnpike road or a public highway (except when otherwise provided by the special Act), either to carry the road over the railway or the railway over the road. A mandamus to command the company to do one of these two things is therefore defective, unless it shows, on the face of it, circumstances which establish the impossibility of the company exercising this option.

Where such a mandamus had been issued, and the return had merely traversed that the road was a public road, and the issue thus raised had been found against the company, and a peremptory mandamus had been awarded,

*Held*, that on a writ of error, the Court of Error being satisfied that the mandamus itself ought not to have issued, had properly reversed the whole judgment. *Regina v. South Eastern Railway Company*, 4 H. of L. Cas. 471.

Case cited in the judgment: *Mayor of London v. Reginald*, 13 Q. B. 1.

#### MISDIRECTION.

*Bill of exceptions, when informal*.—A bill of exceptions, which sets forth what a Judge was asked to direct, and alleges that he refused to give such direction, is informal and bad. A bill of exceptions should state what direction Judge gave, as it is misdirection, and not non-direction, which is the subject of an exception. (By the Judges.) *Anderson v. Fitzgerald*, 4 H. of L. Cas. 484.

Case cited in the judgment: *M'Alpine v. Mangnall*, 3 C. B. 496.

And see *Insurance on Life*.

#### PLEADING.

See *Agreement*.

#### RAILWAY BRIDGE.

See *Mandamus*.

#### SOLICITOR.

See *Agreement*.

#### "SON."

See *Will*.

#### WILL.

*Construction of*.—*Executory trust*.—*Costs*.—"Inherit."—"Son."—"Grandson."—A testator, by a will, written on the pages of a small note-book, divided his property into three classes, marked No. 1, No. 2, No. 3. He devised these classes of property to persons designated by letters. The order of "succession" was marked in one page (54) of his will. This page contained the words—"The eldest and other sons to inherit before the next letter." The persons designated by the letters were all named in a card, which was referred to in the

will, and which was, with the will, admitted to probate. K. was the testator's wife, to whom was given an estate for life in all the classes of the property. The will required implicit obedience to certain orders of the testator on the part of "the individual first to inherit after K.," and if not, "the property aforesaid set down and particularised in No. 1, to go to M., if not to L., and afterwards to his eldest lawfully begotten son, &c." There were similar expressions with regard to N. and O. The card showed that these two letters were intended for the eldest sons of two nephews, but who were then unborn. The property No. 1, consisted of very large sums in stock, which the executors of the will were to invest in the purchase of real estate; and in page 54, L. was named as the person to take No. 1, after the life estate of K. A grandson was "to inherit before the next named in the entail or any one of his sons." Class No. 2, consisted of a small estate in land, and by page 54, O. was, as to that, to succeed to K., and there estate then given to O. was expressly a life estate, with remainder to his eldest and other sons in tail male; and it was there also said "a grandson legitimate shall inherit before a younger son." Class No. 3, consisted of certain estates in Suffolk; the "succession" there, was (page 54) "1st to K. and then to M.," and the devise (page 47) was "1st to K. and then to M., and afterwards to his eldest legitimate son and then to his other legitimate sons in order of primogeniture, provided, but not else, the eldest have no issue male; if he have, it will go to him, and so on to the other sons in like manner. After the decease of K., I repeat, I bequeath all the property aforesaid to M. and his heirs male, in the manner aforesaid, as in the case of L., &c., at page 2, and I mean and order that this mode shall prevail throughout the whole entail, under precisely the same injunctions."

*Held*, that, reading all the parts of the will together, L. only took a life estate in No. 1, with remainder to his eldest and other sons in tail male.

*Held*, also, that this was not an executory trust.

The Court of Exchequer, on an information filed by the Attorney-General for legacy duty, had held that L. took an estate tail. On a bill to carry into effect the trusts of the will, the Vice-Chancellor Turner held that L. took a life estate only.

The Vice-Chancellor's decision was affirmed; but as the testator had himself created the difficulty, the costs were allowed to come out of the estate.

Meaning of words "son," and "grandson," and "inherit." *East v. Twyford and another*, 4 H. of L. Cas. 517.

Cases cited in the judgments: *Wight v. Leigh*, 15 Ves. 564; *Goodtitle v. Herring*, 1 East, 264; *Shelley's Case*, 1 Co. Rep. 104, b.; *Colson v. Colson*, 2 Atk. 246; *Vanderplank v. King*, 3 Hare, 1; *Leake v. Robinson*, 2 Mer. 363.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—“Still attorneyed at your service.”—*Shakespeare.*

SATURDAY, DECEMBER 9, 1854.

### ATTORNEYS' BENEVOLENT INSTITUTION.

We are glad of an early opportunity to call the attention of our readers to a new Institution, which is proposed to be established for “the relief and support of old, infirm, and indigent London Attorneys.” The plan has long been under the consideration of several leading members of the Incorporated Law Society, and looking at the present state of the legal Profession, the proposed relief appears to be most pressingly required. Although all other professions have increased, and are increasing, in number, the attorneys are decreasing; and the number of those who remain on the roll, but are unable to pay the annual Certificate Tax until a late period of the year, is very large—showing by their exclusion from the Law List that great poverty prevails, occasioned, no doubt, by the unceasing alterations in the Law, some of which, we do not dispute, may be useful, but a large proportion, we believe to be equally useless to the public and injurious to the Profession.

It is lamentably true, that many of our unfortunate brethren, who late in life are deprived of the means of subsistence, resort to charitable institutions designed for the relief, not of professional men but of needy persons in other classes of society; those general charities should surely be relieved of such burdens, and the Profession provide for its own aged, indigent, and infirm members. Indeed, we cannot doubt that when the subject is fully brought before them, the 3,000 London solicitors will raise a sufficient fund, either by donations or annual subscriptions, to provide for their meritorious but unsuccessful brethren.

The prospectus of the Institution, which

is in course of circulation, justly states, that “England is eminently distinguished by the numerous and wealthy establishments which exist in every part of the kingdom for the relief of different classes of society, adapted to meet almost every case of distress; they are indeed so many and so various that it would be difficult even to enumerate them, nor will it be here attempted, as it will be sufficient for the present purpose to mention a few only, which more particularly resemble that which it is the object of the present address to propose.

“The Church and the Medical Profession, as well as the Army and Navy, have each their charitable institutions and funds for the relief of their aged, infirm, and indigent members, as also of their widows and fatherless children. The Stipendiary Magistrates of the metropolis, and likewise the Clerks in several of the Government and other public offices, are required to contribute a portion of their salaries towards a superannuation or retiring fund. The officers of the East India Company, on entering their profession, commence with a subscription to a military fund; and almost every trade has its charity for the relief of its aged, infirm, and indigent members; and others are constantly forming:—not to mention the numerous alms-houses, particularly those belonging to the different corporations of trading companies in the city of London and elsewhere, and the innumerable friendly societies scattered over the country; but those to which attention may be more particularly directed for the present purpose are Morden and Dulwich Colleges, the Charterhouse, and similar establishments.”

The promoters of the plan next observe, that—

"Amidst examples so numerous and so laudable, in all ranks and conditions of society, it is matter of surprise that the Attorneys and Solicitors resident in the *Metropolis* should be wholly destitute of any establishment or provision for the relief of the indigent members of their Profession, in cases of old age, bodily infirmity, or mental incapacity."

"There is, it is true, one charitable institution belonging exclusively to the Attorneys, viz. *The Benefit Law Association*, which was established in the year 1817, and is composed of Attorneys living in London, who have either paid twenty guineas in one sum, or who pay an annual subscription of two guineas; but its funds are moderate, and confined to the relief of the *widows and families of deceased members*, and cannot be applied to the support of *members themselves whilst living*, or their families, however necessitous their condition."

It is the object of the address to bring this class of Attorneys to the notice of the Profession, and the Prospectus states, that

"The past neglect of the Attorneys appears the more extraordinary when we consider the many cases of *unfortunate members of the Profession*, who are struggling with old age, infirmity, disease and poverty, and lingering out a miserable existence dependent upon casual charity for support.

"It will perhaps be said, by some of the more fortunate and wealthy members of the Profession, that it is sufficiently lucrative to enable a man with common industry and prudence, not only to support himself and family, but also to provide for the accidents and contingencies of life.

"However this may have been the case formerly, but which may fairly be doubted, it is certainly not so at present, for from various causes the profits of an Attorney are very much reduced, while their number continues undiminished, and amount at present to nearly 7,000 in the country, and 3,000 and upwards in London; and the number of indigent members of the Profession has for a long time past been increasing, and must continue to do so. And although it may be said that the evil will partly cure itself as soon as it is discovered that the supply of professional labour exceeds the demand, yet in the meantime a great deal of misery is generating and urgently requires to be provided for.

"And when it is asserted that the profits of an Attorney are sufficient to support him and his family respectably, and also to make provision for the contingencies of life, it is assumed that he has business, whereas the acquiring of it is a work of time, and the result very uncertain. Some men, indeed, are enabled, with the assistance of family connexions or powerful friends, to form a business of their own, and others are rich enough to buy a practice or a share of one; but these are few

indeed, and the majority have nothing but their own unaided exertions to rely upon. To that class of the Profession the present plan is more particularly submitted, as they are most liable to be affected by the contingencies and calamities of life, for which it is intended thus to provide.

"If, however, notwithstanding all the difficulties a young Attorney has to contend with, he is able to establish a business, and even admitting that the profits of it would be sufficient for the support of himself, a wife, and children; yet his life is subject to various vicissitudes, casualties, and misfortunes, which with the utmost prudence it is impossible invariably to guard against. He may provide for death by insurance, but not against bodily infirmity or mental incapacity, either of which may, and one or other often does partially, if not totally, incapacitate him from attending to business; and in this respect the profession of an attorney, more particularly and entirely, depends upon the personal confidence which clients repose in his ability and integrity. When that is once destroyed or suspended, even for a short time, his business is almost always totally lost, for it cannot be carried on by clerks, or transferred to successors like a trade, which, when once established, may continue to be carried on either by a man's wife and family, although he may be incapacitated from attending to it himself, or, after his death, by means of assistants and shopmen. The Attorney may be also ruined at one blow by accident or misplaced confidence; and if once cast down, his credit is destroyed, and it is but very rarely indeed that he can have the opportunity of re-establishing himself."

Under these circumstances, it seriously behoves Attorneys no longer to delay providing a remedy for these evils, and which, it is suggested, may be accomplished by the following plan, viz. :—

"That an Establishment shall be formed for the support of the aged, infirm, and indigent members of the Profession, of good character, who have practised in London, to be called

#### "THE LONDON ATTORNEYS' BENEVOLENT INSTITUTION.

"That the objects of the Institution shall be divided into two classes :—

"The one to be composed of *widowers*, without families living with and dependent upon them, and of *bachelors*, who shall reside together in a public building to be built, purchased, or rented for the purpose, and to be called

#### "THE LONDON ATTORNEYS' COLLEGE OR HOSPITAL,

and shall be denominated *In-Pensioners*, and maintained and supported out of the funds of the Institution, in like manner as the inmates of *Morden College* and the other similar establishments.

"The other class,—viz. those having wives

or children living with or dependent upon them, shall be denominated *Out-Pensioners*, and may be permitted to reside in any part of the United Kingdom that they may select, and be allowed such pensions as may be necessary, and the state of the fund will allow.

"That in the meantime, and until the College is ready for the reception of the *In-Pensioners*, all the Pensioners must necessarily be considered as *Out-Pensioners*.

"That the *Funds* necessary for the support of the Institution shall be raised by the contribution of not less than 1*l.* a year by every Attorney taking out a London certificate, to be paid by him to the Secretary of the Incorporated Law Society at the time when he gives his certificate enabling the Attorney to obtain from the Stamp Office his annual certificate to practise, and to be accounted for and paid by the Secretary to a person to be appointed Treasurer of the Institution.

"It is presumed that no London Attorney can reasonably object to the payment of so small an annual sum (which is not more than, if so much as, the members of friendly societies usually pay to their clubs), seeing that he has recently been relieved from the payment of 3*l.* a year by the repeal of that sum on his certificate, and more particularly when he reflects that it is destined for the support of an Institution of which he himself or some part of his family may possibly have the misfortune to become an object.

"It may also be reasonably expected that the more wealthy members of the Profession will be induced to subscribe towards a fund for the building of the College, and likewise annual subscriptions for the support of the Institution, and may remember it in their wills.

"The Institution to be under the management of a Council or Committee consisting of members, having votes each as a qualification, to be chosen by the subscribers out of the body at large; each of whom shall have one vote in respect of his annual subscription, and one vote for every additional annual subscription of 1*l.* and for every donation of 10*l.*

"The Council to have power from time to time to make rules and regulations for the government and management of the Institution.

"The Pensioners to be elected by the members at large, each member having the same number of votes as he is entitled to on the election of Members of the Council."

The Promoters of the Institution, who have circulated the above statement, are desirous of ascertaining the opinion of the London Attorneys before convening a General Meeting, to consider the details of the measure, and elect a Committee of Management; and they have requested the favour of an answer, with any observations or suggestions, to be sent to Mr. Maugham

(Honorary Secretary), at the Incorporated Law Society's Hall, Chancery Lane.

The *Provisional Committee* are:—Mr. Holme (Chairman), Mr. Austen, Mr. Keith Barnes, Mr. Alfred Bell, Mr. Coverdale, Mr. Farrer, Mr. Gregory, Mr. Lavie, Mr. Leman, Mr. Maynard, Mr. Ranken, Mr. Sudlow, Mr. Wilde, and Mr. John Young.

We can add but little to the just and forcible appeal which is thus made to the Attorneys and Solicitors of the Metropolis. The *Medical Profession* has of late years successfully established an extensive Institution at Epsom for purposes similar to those now proposed on behalf of the larger branch of the Legal Profession; and there is also in progress a Society for the disabled *Clergy*, comprising the members who, having no permanent appointment, are subjected during long illness or incapacity, or in old age, to painful dependence. The Law Clerks, to their great credit, subscribe nearly 1,200*l.* a year for the support of their sick or disabled brethren.

We trust it will soon be seen, that amidst all the changes which have taken place, enough remains to enable the Metropolitan Solicitors to carry into effect the objects of this benevolent Institution.

This new Association is essential to complete the series of great and important improvements effected by the Attorneys and Solicitors during the last 25 years. It may not be useless to record briefly the services rendered to the Profession, and thereby consequently to the public, during that quarter of a century.

Excluded from the Inns of Court by the regulations of the Benchers in some of the Inns in 1825, and in the others in 1828, the Attorneys commenced the Institution since called "The Incorporated Law Society," and having purchased land, erected a Hall, Library, and Offices, obtained a charter in 1831, and the building was opened in 1832. In the next year, 1833, several Courses of Lectures were established on Common Law, Equity, and Conveyancing, and subsequently on Bankruptcy, Criminal Law, and Proceedings before Justices of the Peace. In 1835, a memorial was presented by the Committee of Management of the Institution, suggesting an examination of Articled Clerks before admission on the Roll. In 1836, the Judges of the Common Law Courts and the Master of the Rolls adopted the suggestion, and made rules and regulations for carrying it into effect. In 1841, a Bill was prepared for, and introduced by, Lord Langdale, to con-



consolidate and amend the Law of Attorneys. The Act passed in 1843, under which the examination was made permanent, and the Incorporated Law Society appointed Registrar of Attorneys. The Society now consists of nearly 1,200 London Attorneys, and the number of Provincial Attorneys is also gradually increasing. Upwards of 90,000*l.* has been invested in the site, buildings, books for the library, fixtures, and furniture; and the members subscribe upwards of 2,200*l.* a year towards the current expenses of the establishment, exclusive of their entrance fees, which at first were 25*l.*, then reduced to 15*l.*, and now 5*l.*

All these large investments of capital and annual expenditure, it will be recollected, have been made during the existence of the oppressive Tax on Annual Certificates,—an impost not payable by any other profession,—and whilst year after year the merciless Law Reformers were reducing the emoluments of the practitioners. They might indeed have excused themselves from effecting these improvements; but they have generously contributed, not only large funds, but the Council have bestowed their valuable time, week by week, in promoting and carrying into effect the various measures we have referred to.

This benevolent Institution will crown their labours, and we trust its promoters will live to see it flourish like the parent society.

## MEETING OF PARLIAMENT,

### PRIVATE BILLS.—EXECUTOR AND TRUSTEE SOCIETY.

It may be reasonably anticipated that the public business, which will be brought before Parliament, between the 12th instant and Christmas Day, will be confined to the great and pressing subject of *the War*, its progress hitherto, the present state of affairs, and its future management. Scarcely any other topic, however otherwise interesting, will obtain a hearing. We may therefore expect that the agitation of further measures of Law Reform will be suspended. Nevertheless, we shall, of course, be watchful. Probably some notices may be placed on the votes and proceedings of projects for consideration hereafter.

It may be anticipated, however, that, notwithstanding the debates will involve only the one predominant subject of national interest, numerous matters of private

legislation will be brought forward, and amongst others, we are informed that the Executor and Trustee Society will again take the field in behalf of the project of last Session which was so signally defeated.

We conceive, however, that Bills of this kind should be introduced as *public measures*, because they seek to alter the long-established Law and to confer powers on a corporate body, which, to say the least, must affect a large part of the community, and introduce a novel practice in our system of Equity. Brought in as a private Bill, the Public, as well as the Profession, are deprived of the opportunity of opposing its principle or details, except at an enormous expense. Such measures, indeed, are carried in a comparatively stealthy manner, and unless there is an active and vigilant opposition, there is little chance of a sufficient hearing or an impartial investigation. A few members, either interested in the success of the project, or deceived as to its utility or probable consequences, attend the several stages of the Bill and prevent the searching discussion which ought to take place. In the last Session of Parliament, a cry was raised that Joint-Stock Trust Companies must necessarily be good for the public, because they were opposed by the lawyers; and when they came on, the House was little inclined to listen to any objections, because the Minister brought down a message from the Crown announcing the declaration of war with Russia. Fortunately, however, a hearing was obtained in the Upper House, and a Select Committee, after sitting several days on the subject, hearing counsel, and taking evidence *pro* and *con*, decided against the measure.

It is rumoured that, besides the revival of the Executor and Trustee Society, several applications will be made to incorporate other institutions for similar purposes.

## NEW COMMON LAW RULES.<sup>1</sup>

### FORMS OF PROCEEDINGS.

THE forms of proceedings contained in the Schedule hereunder may be used in the cases to which they are applicable, with such alterations as the nature of the action, the description of the Court in which the action is depending, the character of the parties, or the circumstances of the case may render necessary; but any variance therefrom, not being in

<sup>1</sup> See the Rules, p. 37, *ante*.

matter of substance, shall not affect their validity or regularity.

1. *Issue of Fiat to be tried by a Judge without a Jury,*

[Proceed as in an issue to be tried by a jury as in ordinary cases, until the joinder of issue, and then thus:] And the parties aforesaid having, by consent in writing duly signed, left the decision of the said issue [or "issues"] to the Court, it was on the day of 18 (date of rule or order for allowance of trial), by a rule of this Court [or "by an order of the Honourable Sir knight, one of her Majesty's justices of her Court of Queen's Bench [or "Common Pleas," or "one of the barons of her Majesty's Court of Exchequer," as the case may be] ordered that such trial should be allowed; therefore let the same be had accordingly.

2. *Subpoena thereon and in other cases.*

[The same as the form now in use, but in all cases omit the words "by a jury."]

3. *Nisi Prius Record therein.*

[The same as the form already directed by rule of Hilary Term, 1853.

4. *Postea therein, on a Verdict for Plaintiff on all the Issues, where the Cause is tried in London or Middlesex, and where the Defendant appears at the Trial.*

Afterwards on the day of 18 (the first day of the sittings or the day of the trial) at the Guildhall of the city of London [or "at Westminster Hall in the county of Middlesex] before Sir knight, one of her Majesty's justices of her Court of Queen's Bench [or "Common Pleas," or "one of the barons of her Majesty's Court of Exchequer," as the case may be; or if tried before the chief justice or chief baron state the fact, as in the prescribed form of postea on a trial before a jury. If tried before two judges state the name of both, and of the Court of which they are judges], come the parties within mentioned, by their respective attorneys within mentioned, for the trial of the said issue [or "issues"], and the said judge [or "baron," or "chief justice," or "chief baron," as the case may be] decides the said issue [or "each of the said issues"] in favour of the plaintiff [or the decision may be stated in the affirmative or negative words of the issue, as, for example, thus: "And the said judge [or "baron"] as to the first issue within joined decides that the defendant did promise as within alleged; and as to the second issue within joined the said judge [or "baron"] decide that the defendant did not satisfy and discharge the plaintiff's claim by payment, as within alleged"], and the said judge [or "baron"] assesses the damages of the plaintiff, on occasion of the premises within complained of, over and above his costs of suit, to £ [Omit the assessment of damages if none made]: Therefore, &c.

5. *The like, where the Trial was at the Assizes.*  
Afterwards on the day of 18

(the commission day of the assizes) at in the county [or "city"] of at the assizes there holden in and for the said county [or "city"] before Sir knight, one of her Majesty's justices of her Court of [or "one of the barons of her Majesty's Court of the Exchequer," as the case may be], come the parties, &c. [Conclude as in the preceding form.]

6. *The like, where one Issue is found for the Plaintiff and another for the Defendant, the latter going to the whole Action.*

[Proceed as in the preceding forms of postea to the statement of the appearance of the parties at the trial, and then thus:] And the said judge [or "baron," or "chief justice," "chief baron," as the case may be] decides the first issue within joined in favour of the plaintiff; and he decides the second issue within joined in favour of the defendant [as the case may be; or the decision may be stated in the affirmative or negative of each issue, as directed in the preceding form]: Therefore, &c.

7. *Judgment thereon for Plaintiff.*

[Copy the issue and then proceed thus:] Afterwards on the day of 18 (day of signing final judgment) come the parties aforesaid, by their respective attorneys aforesaid, and Sir knight, one of her Majesty's justices of her Court of [or "one of the barons of her Majesty's Court of Exchequer," as the case may be; or if tried before the chief justice or chief baron, state the fact as in the prescribed form of postea in a trial before a jury; if tried before two judges state the names of both, and of the Court of which they are judges], by whom the said issue was [or "issues were"] tried hath [or "have"] sent hither his [or "their"] record had before him [or them] in these words: Afterwards, &c. [Copy the postea]: Therefore it is considered that the said plaintiff do recover against the defendant the said moneys by the said judge [or "baron," or "chief justice," or "chief baron," as the case may be], so assessed, and £ for his costs of suit.

[In the margin of the roll, opposite the words "Therefore it is considered," write "Judgment signed the day of A.D." inserting the day of signing the judgment.]

8. *Execution thereon.*

[The same as in ordinary cases.]

9. *Writs of Execution where the Court or a Judge decides on Matters of Account.*

[The same as in ordinary cases of execution on a judgment, except that instead of the writ stating the money to be levied as having been recovered by a judgment, and omitting the direction to levy interest, say "£", which by a rule of our Court of Queen's Bench [or "Common Pleas," or "by an order of Sir knight, one of our justices of our Court of Queen's Bench or Common Pleas," or "one of the barons of our Exchequer," as the case may be], dated the day of 18

made in pursuance of the third section of "The Common Law Procedure Act, 1854," in an action commenced in our said Court of at the suit of *A. B.* [or "the said *A. B.*," if before mentioned] against the said *C. D.*, was ordered to be paid by the said *C. D.* to the said *A. B.* [as the case may be, following the terms or substance of the rule or order]. [If costs were ordered to be paid, then the direction to levy them may be thus: "together with certain costs in the said rule [or "order"] mentioned, which said costs were afterwards on the day of 18, taxed and allowed by our said Court of at £ .] If the rule or order directs that interest shall be paid, then the direction to levy it may be thus: "together also with interest on the said sum of £ at the rate of £ per cent. from the said day of 18," as the case may be, according to the rule or order].

10. Writs of Execution where Matter of Account is referred to and decided on by an Arbitrator, Officer of the Court, or County Court Judge.

[The same as directed in the preceding form, but instead of stating the levy to be of money ordered by a rule or order to be paid, say, "£ , which by an award [or "certificate"], dated the day of 18 (date of award or certificate), made by *E. F.*, esquire, an arbitrator appointed by the parties [or "by *E. F.*, esquire, one of the Masters (or other officer, naming his office) of our Court of , or "by *E. T.*, esquire, the Judge of the County Court of ,"] [as the case may be], pursuant to the 3rd section of "The Common Law Procedure Act, 1854," was awarded [or "certified"] to be due and payable from the said *C. D.* to ["the said"] *A. B.*

11. Special Case for the Opinion of the Court under Section 4 of the Common Law Procedure Act, 1854, where the Allowance or Disallowance of a particular Item or Items depends on a Question of Law.

In the Queen's Bench ["Common Pleas" or "Exchequer."]

Between { *A. B.*, Plaintiff  
and  
*C. D.*, Defendant.

The following case is stated for the opinion of the Court, under a rule of the Court [or "order of the honourable Mr. Justice [or "Baron "], dated the day of 18, made pursuant to the 4th section of "The Common Law Procedure Act, 1854." [Here state the material facts of the case bearing upon the question of law to be decided.]

[The question [or questions] for the opinion of the Court is [or are]:

First. Whether, [&c.]

Second. Whether, [&c.]

12. Issue to be tried by a Jury where the Court or a Judge has directed it, under Section 4, where the Allowance or Disallowance of a particular Item or Items depends on a Question of Fact.

In the Queen's Bench [or "Common Pleas" or "Exchequer of Pleas"].

The day of 18 (date of issue when delivered by the plaintiff).

(Venue.) *A. B.* by his attorney, sues *C. D.*, and the plaintiff [or "defendant"] affirms, and the defendant [or "plaintiff"] denies, that, &c. [Here state the question of fact to be tried as directed by the Court or judge. In some cases it may be advisable to state an inducement before stating the question in dispute.] [If there be more than one question to be decided, state it thus: "and the said plaintiff [or "defendant"] also affirms, and the defendant [or "plaintiff"] also denies, that, &c." And it has been ordered by the Court [or "by the honourable Mr. Justice or "Baron "]] that the said question [or "questions"] shall be tried by a jury; therefore let the same be tried accordingly.

13. Postea thereon.

[The same as in ordinary cases, except that there is no assessment of damages.]

14. Special Case stated by an Arbitrator under Sect. 5, of the Common Law Procedure Act, 1854.

[In the special case the arbitrator must state whether the arbitration is under a compulsory reference under the Act, or whether it is upon a reference by consent of the parties where the submission has been or is to be made a rule or order of one of the Superior Courts of Law or Equity at Westminster. In the former case the award must be entitled in the Court and cause, and the rule or order of the Court must be set forth. In the latter case the terms of the reference relating to the submission being made a rule or order of Court must be set forth.]

15. Judgment thereon when a Judgment has been ordered.

[Copy the special case, and then proceed thus: Afterwards on the day of 18 come here the parties aforesaid, and the Court is of opinion that [state the opinion of the Court on the question or questions stated in the case, in the affirmative or negative, as the case may be.] Therefore it is considered that the plaintiff do recover against the defendant the said £ and £ for his costs in the suit.

[In the margin, opposite the words, "Therefore it is considered, &c." write "Judgment signed the day of 18," inserting the day of signing final judgment.]

16. Postea, where the Judge upon the Trial of an Issue in Fact before him under Sect. 1, directs an Arbitration as to Part of the Claim under Sect. 6 of the Common Law Procedure Act, 1854.

[Proceed as in the above prescribed form of postea No. 4 or 5, as the case may be, to the statement of the appearance of the parties at the trial inclusive, and then proceed thus: "And as to the plaintiff's claim in the count of the declaration within mentioned [as the case

may be], it appears to the said judge [or "baron"] that the questions arising thereon involve matter of account which cannot conveniently be tried before him; and hereupon the said judge [or "baron"] orders that the plaintiff's claim in the said count of the declaration mentioned and referred to E. F. of esquire, an arbitrator appointed by the said parties [or "to E. F., esquire, being one of the masters of the Court of Queen's Bench," or "Common Pleas," or "Exchequer of Pleas," (or other officer of the Court, stating his office), or "to E. F., esquire, being the judge of the County Court of upon the terms that, &c. [set forth the terms of the order], and the said judge [or "baron"] decides each of the said issues, except those relating to the said count of the declaration, in favour of the plaintiff [or the statement of the decision may be in the affirmative or negative words of the issue, as, for example, thus: "And the said judge [or "baron"] as to the first issue within joined decides that the defendant is guilty as within in the count of the declaration alleged, and as to the second issue within joined the said judge [or "baron"] decides that the defendant did not commit the acts within in the count of the declaration alleged by the plaintiff's leave." And the said judge [or "baron"] assesses the damages of the plaintiff on occasion of the premises within in the count of the declaration complained of, over and above his costs of suit, to £

• [Omit the assessment of damages, if none made.] Therefore, &c.

17. *Writ of Habere Facias Possessionem on a Rule to deliver Possession of Land pursuant to Award.*

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the Sheriff of greeting. We command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause A. B. to have possession of [here describe the lands and tenements as in the rule for the delivery of possession], and which lands and tenements by a rule of our Court of Queen's Bench [or "Common Pleas," or "Exchequer of Pleas"], dated the day of 18, made pursuant to the sixteenth section of "the Common Law Procedure Act, 1854," E. F. (the party named in the rule) was ordered to deliver possession to the said A. B., and in what manner you have executed this our writ make appear to us [or in Common Pleas, "to our justices," or in Exchequer, "to the barons of our Exchequer"] at Westminster, immediately after the execution hereof, and have you there then this writ. Witness at Westminster, the day of in the year of our Lord .

18. *Judgment for the Plaintiff on a Special Case stated under Section 32 of the Common Law Procedure Act, 1854.*

[Copy the special case, and then proceed

thus:] Afterwards on come here the parties aforesaid, by their respective attorneys aforesaid, and the Court is of opinion that, &c. [state the opinion of the Court on the question or questions stated in the case]. Therefore it is considered that the plaintiff do recover against the defendant the said £ and £ for his costs of suit.

[In the margin, opposite the words "Therefore it is considered, &c.," write "Judgment signed the day of 18" inserting the day of signing final judgment.]

19. *Judgment of Affirmance by Court of Error in Exchequer Chamber on a Special Case.*

[Copy to the end of the judgment on the roll in the action, and then proceed thus:] Afterwards on (the day of lodging the note of error) the defendant [or "plaintiff"] delivered to one of the masters of the Court here a memorandum in writing in the form required by and according to the Statute in that case made and provided, alleging that there was error in law in the record and proceedings aforesaid; and afterwards on (the day of making the entry of the suggestion on the roll) the defendant [or "plaintiff"] said that there was no error therein: And thereupon afterwards on (the day of giving judgment in the Exchequer Chamber), in the Court of Exchequer Chamber of our Lady the Queen before the justices of the Common Bench of our said Lady the Queen and the barons of her Exchequer, [or if the error be on a judgment of Common Pleas, say "before the justices of our Lady the Queen assigned to hold pleas in the Court of our said Lady the Queen before the Queen herself and the barons of her Exchequer," or if the error be on a judgment of the Exchequer, say, "before the justices of our Lady the Queen assigned to hold pleas in the Court of our Lady the Queen before the Queen herself and the justices of the Common Bench of our said Lady the Queen,"] come as well the plaintiff as the defendant by their respective attorneys aforesaid\*, and it appears to the said Court of Error in the Exchequer Chamber that there is no error in the record and proceedings aforesaid, or in giving the judgment aforesaid: Therefore it is considered by the said Court of Error that the judgment aforesaid be in all things affirmed, and stand in full force and effect, the said causes above for error suggested in anywise notwithstanding: And it is further considered by the same Court, that the said plaintiff do recover against the defendant £ for his damages and costs which he had sustained and expended by reason of the delay of execution of the judgment aforesaid, on pretence of the prosecution of the said proceedings in error, and that the plaintiff have execution thereof.

20. *Judgment of Reversal in the like Case.*

[The same as the preceding form to the asterisk\*, and then thus:] And it appears to the said Court of Error that there is manifest error in the record and proceedings aforesaid, and in giving the judgment aforesaid: Therefore it is

considered by the said Court of Error, that the judgment aforesaid for the errors aforesaid be reversed, annulled, and altogether holden for nought; and that the said defendant be restored to all things which he hath lost by occasion of the said judgment, &c.

21. *Judgment of Court of Appeal in Exchequer Chamber on a Disposal of the Appeal in the Plaintiff's Favour where Judgment for him had been given in the Court below, under the 41st and 42nd Sections of the Common Law Procedure Act, 1854.*

[Copy the case for the appeal as stated by the parties, and then proceed thus:] Afterwards on (the day of giving judgment of Court of Appeal), in the Court of Exchequer Chamber of our Lady the Queen before the justices of the Common Bench of our Lady the Queen and the barons of her Exchequer, [or if the appeal be from the Common Pleas say, "before the justices of our Lady the Queen assigned to hold pleas in the Court of our Lady the Queen, before the Queen herself and the barons of her Exchequer" [or, if the appeal be from the Exchequer, say, "before the justices of our Lady the Queen assigned to hold pleas in the Court of our Lady the Queen before the Queen herself and the justices of the Common Bench of our said Lady the Queen,"] come the parties aforesaid by their respective attorneys aforesaid; and the said Court of Appeal decide that, &c. [state the decision of the Court upon the questions raised by the case on appeal]; and it is considered by the said Court of Appeal that the plaintiff do recover against the defendant £ for his costs which the plaintiff hath sustained and expended in the said appeal, and that the plaintiff have execution thereof.

22. *Fi. fa. against a Garnishee, under the 63rd Section of the Common Law Procedure Act, 1854, where Debt not disputed or Garnishee does not appear.*

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the Sheriff of greeting. We command you that you omit not by reason of any liberty of your county, but that you enter the same, and of the goods and chattels of E. F. in your bailiwick you cause to be levied £ , being the amount of [or "part of the amount of," if the debt be more than the judgment debt] a debt due from the said E. F. to C. D., heretofore attached in the hands of the said E. F. by an order of Sir knight, one of our justices of our Court of Queen's Bench [or "one of our justices of our Court of Common Pleas," or "one of the barons of our Exchequer"], dated (date of order), pursuant to the statute in such case made, to satisfy [or, if the debt be less than the judgment debt, say, "towards satisfying"] £ , which A. B., lately in our Court of Queen's Bench [or "Common Pleas," or "Exchequer of Pleas"] recovered against the said C. D., whereof the said C. D. is convicted; and that you have

that sum of £ before us, [or in Common Pleas, "before our justices," or in Exchequer, "before the barons of our Exchequer,"] at Westminster, immediately after the execution hereof, to be rendered to the said A. B. in satisfaction as aforesaid, and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us [or in the Common Pleas, "to our justices," or in the Exchequer, "to the barons of our Exchequer," as the case may be,] at Westminster, immediately after the execution hereof, and have you there then this writ. Witness at Westminster, the day of in the year of our Lord .

23. *Ca. sa. in the like Case.*

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the Sheriff of greeting. We command you that you omit not by reason of any liberty in your county, but that you enter the same, and take E. F., if he be found in your bailiwick, and him safely keep, so that you may have his body before us [or in Common Pleas, "before our justices," or in Exchequer, "before the barons of our Exchequer,"] at Westminster immediately after the execution hereof, to satisfy A. B. £ , being the amount [or "part of the amount," if the debt be more than the judgment debt,] of a debt due from the said E. F. to C. D., heretofore attached in the hand of the said E. F. by an order of Sir knight, one of our justices of our Court of Queen's Bench [or "one of our justices of our Court of Common Pleas," or "one of our barons of the Exchequer,"] dated (date of order) pursuant to the statute in such case made and provided, to satisfy [or "towards satisfying," if the debt be less than the judgment debt,] £ , which the said A. B. lately in our said Court of Queen's Bench [or "Common Pleas," or "Exchequer of Pleas," as the case may be] recovered against the said C. D. whereof the said C. D. is convicted, and have you there then this writ. Witness at Westminster, the day of in the year of our Lord .

24. *Writ against Garnishee to show Cause why the Judgment Creditor should not have execution against him for the Debt disputed by him.*

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to E. F. greeting. We command you that within eight days after the service of this writ upon you, inclusive of the day of such service, you appear in our Court of Queen's Bench [or "Common Pleas," or "Exchequer of Pleas,"] to show cause why A. B. should not have execution against you for £ , being the amount [or "part of the amount," if the debt exceeds the judgment debt,] of a debt due from you to C. D. to satisfy [or "towards satisfying" if the debt be

less than the judgment debt,] £ , which on the day of 18 (date of judgment), the said A. B. by a judgment of our Court of Queen's Bench [or "Common Pleas," or "Exchequer of Pleas,"] recovered against the said C. D., and for costs of suit in this behalf; and take notice, that in default of your so doing the said A. B. may proceed to execution. Witness at Westminster, the day of , in the year of our Lord .

[The following indorsements must be made on the writ:] This writ was issued by P. A. [plaintiff's attorney's name in full] of [place of his abode in full; also if sued out as agent for an attorney in the country, here say "as agent for A. A. of " ] attorney for the said A. B. [or if sued out by the plaintiff in person, "This writ was issued in person by the plaintiff within named, who resides at , mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of the plaintiff's residence, if any such there be.]

The plaintiff claims £ [the amount of the debt claimed from the garnishee] and £ for costs, and if the amount thereof be paid to the plaintiff or his attorney within four days from the service hereof, further proceedings will be stayed.

[Within three days after the service fill up the following indorsement:] This writ was served by me X. Y. on C. D. on the day of 18 .

#### 25. Declaration thereon.

In the Queen's Bench [or "Common Pleas," or "Exchequer of Pleas,"]

The day of A.D. .  
—(Venus).—A. B. by his attorney [or "in person"] sues E. F. by a writ issued forth of this Court, in these words, Victoria, &c. [copy the writ], and the said E. F. has appeared to the said writ, and the said A. B. by his attorney aforesaid says that the said debt due from the said E. F. to the said C. D. is for, &c. [here state the debt as in a declaration in ordinary cases], and the said A. B. prays that execution may be adjudged to him accordingly for the said £ and for costs of suit in this behalf.

#### 26. Plea thereto.

In the Queen's Bench [or "Common Pleas," or "Exchequer of Pleas,"]

The day of A.D. .  
E. F. } The said E. F. by his att. A. B. } attorney says, that he never was indebted to the said C. D. as alleged [or plead such other defence or several other defences as in other cases].

#### 27. Issue thereon.

[Copy the declaration and pleadings, and conclude thus: Therefore let a jury come, &c.]

#### 28. Postea thereon.

[The same as in ordinary cases, omitting the assessment of damages.]

#### 29. Judgment for plaintiff therein.

[The same as in ordinary cases to the state,

ment of the judgment, which may be thus: "Therefore it is considered that the said A. B. have execution against the said E. F. for the said £ the amount [or "part of the amount"] of the said debt due from him to the said C. D., to satisfy [or "towards satisfying," if the debt be less than the judgment debt,] the said £ which the said A. B. on the said day of 18 (date of judgment against judgment debtor) by the judgment of this Court recovered against the said C. D.; and it is further considered that the said A. B. do recover against the said E. F. £ for his costs of suit in this behalf.

#### 30. Fi. fa. therein.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the Sheriff of greeting. We command you that you omit not by reason of any liberty of your county, but that you enter the same, and of the goods and chattels of E. F. in your bailiwick you cause to be made £ the amount [or "part of the amount," if the debt be more than the judgment debt,] of a debt due from the said E. F. to C. D. to satisfy [or "towards satisfying, if the debt be less than the judgment debt,] £ which A. B. on the day of 18 (date of judgment against judgment debtor) by the judgment of our Court of Queen's Bench [or "Common Pleas," or "Exchequer of Pleas,"] recovered against the said C. D., and whereupon it has been adjudged by our said Court that the said A. B. should have execution against the said E. F. for the said £ , and also £ , which in our same Court were adjudged to the said A. B. for his costs of suit which he hath been put to on occasion of our writ sued out against the said E. F. at the suit of the said A. B. in that behalf, whereof the said E. F. is convicted, and have the said moneys before us [or in Common Pleas, "before our justices," or in the Exchequer, "before the barons of our Exchequer,"] at Westminster, immediately after the execution hereof, to be rendered to the said A. B., and that you do all such things as by the Statute passed in the second year of our reign you are authorised and required to do in this behalf; and in what manner you shall have executed this our writ make appear to us [or in the Common Pleas, "to our justices," or in the Exchequer, "to the barons of our Exchequer," as the case may be], at Westminster, immediately after the execution hereof, and have you there then this writ. Witness at Westminster, the day of in the year of our Lord .

#### 31. Ca. sa. therein.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the Sheriff of greeting. We command you that you omit not by reason of any liberty of your county, but that you enter the same, and take E. F., if he shall be found in your bailiwick, and him safely keep, so that you may have his body

before us, [or in the Common Pleas, "before our justices," or in the Exchequer, "before the barons of our Exchequer, as the case may be,] at Westminster, immediately after the execution hereof, to satisfy A. B. £ the amount [or "part of the amount," if the debt be more than the judgment debt,] of a debt due from the said E. F. to C. D., and for the levying of which it has been adjudged by our Court of Queen's Bench [or "Common Pleas," or "Exchequer of Pleas,"] that the said A. B. should have his execution against the said E. F., to satisfy [or "towards satisfying," if the debt be less than the judgment debt,] £ which the said A. B. on (the date of the judgment against the judgment debtor) by the judgment of the said Court recovered against the said C. D., and further to satisfy the said A. B. £ which in our same Court were adjudged to the said A. B. for his costs of suit which he hath been put to on occasion of our writ sued out against the said E. F. at the suit of the said A. B. in that behalf, whereof the said E. F. is convicted; and have you there then this writ. Witness at Westminster, the day of in the year of our Lord .

32. *Judgment for Plaintiff after Verdict that a Mandamus do issue, under Section 71 of the Common Law Procedure Act, 1854.*

[The same as in the ordinary form of an entry of a judgment to the end of the postea, and then thus:] Therefore it is considered that a writ of mandamus do issue commanding the defendant to [here state the duty to be performed, or the thing to be done, as claimed by the declaration]; and it is also considered that the plaintiff do recover of the defendant the said moneys by the justices [or "by the judge" or "baron"] aforesaid in form aforesaid above assessed, and also £ for his costs of suit in this behalf.

[In the margin of the judgment opposite the first words, "Therefore it is considered, &c.," write "judgment signed the day of 18," inserting the day of signing final judgment.]

33. *Writ of Inquiry to ascertain the Expense incurred by the doing of an Act, and for the doing of which a Mandamus was issued.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the Sheriff of greeting. Whereas upon an application by A. B., the plaintiff in an action against C. D. in our Court of Queen's Bench [or "Common Pleas," or "Exchequer of Pleas," as the case may be,] at Westminster, our said Court did on the day of A. D. (date of order) direct that [state the terms of the order directing the act to be done at the defendant's expense]; and the said A. B. [or "and E. F.," if another person than the plaintiff has been appointed by the Court to do the act,] has done the said act so directed to be done; and in order to enable our said Court to ascertain the amount of the expense of the doing the same we command you that by the

oath of twelve good and lawful men of your bailiwick you diligently inquire what is the amount of the expenses incurred by the said A. B. [or "by E. F.," as the case may be,] in the doing of the said act, and that you send to us [or in Common Pleas, "to our justices," or in Exchequer, "to the barons of our Exchequer,"] at Westminster, on the day of now next ensuing, the inquisition which you shall thereupon take, under your seal and the seal of those by whose oath you shall take that inquisition, together with this writ. Witness (name of chief justice, or in Exchequer of chief baron) at Westminster, the day of in the year of our Lord .

34. *Writ of Execution in Detinue, under Section 78 of the Common Law Procedure Act, 1854, for the Return of the Chattel detained, and for a Distringas until returned, separate from a Writ for Damages or Costs.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the Sheriff of greeting. We command you, that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the following chattels, that is to say, [here enumerate the chattels recovered by the judgment for the return of which execution has been ordered to issue,] to be returned to A. B., which the said A. B. lately in our Court before us [or in the Common Pleas, "before our justices," or in the Exchequer, "before the barons of our Exchequer,"] at Westminster recovered against C. D. in an action for the detention of the same, whereof the said C. D. is convicted.\* And we further command you, that if the said chattels cannot be found in your bailiwick you omit not by reason of any liberty of your county, but that you enter the same, and distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither the said C. D. nor any one for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels; and in what manner you shall have executed this our writ make appear to us [or in Common Pleas, "to our justices," or in Exchequer, "to the barons of our Exchequer,"] at Westminster, immediately after the execution hereof and have you there then this writ. Witness at Westminster, the day of in the year of our Lord .

35. *The like, but, instead of a Distress until the Chattel is returned, commanding the Sheriff to levy on Defendant's Goods the assessed Value of it.*

[Proceed as in the preceding form until the\*, and then thus:] And we further command you, that if the said chattels cannot be found in your bailiwick you omit not by reason of any liberty of your county, but that you enter the same, and of the goods and chattels of the said C. D. in your bailiwick you cause to be made £ (the assessed value of the chattels), whereof the said C. D. is also convicted, and that in the execution of this our last-mentioned

command you do all such things as by the Statute passed in the second year of our reign you are authorised and required to do in this behalf; and in what manner you shall have executed this our writ make appear to us [or in the Common Pleas, "to our justices," or in the Exchequer, "to the barons of our Exchequer," as the case may be,] at Westminster, immediately after the execution hereof, and have you there then this writ. Witness at Westminster, the       day of       in the year of our Lord

36. *Indorsement on Writ of Summons of Claim of a Writ of Injunction under Section 79 of the Common Law Procedure Act, 1854.*

The plaintiff intends to claim a writ of injunction to restrain the defendant from [here state concisely for what the writ of injunction is required, as, for example, thus: "felling or cutting down any timber or trees standing, growing, or being in or upon the land and premises at       in the county of       , and from committing any further or other waste or spoil in or upon the said land and premises"] And take notice, that in default of the defendant's entering an appearance, as within commanded, the plaintiff may, besides proceeding to judgment and execution for damages and costs, apply for and obtain such writ.

|                 |                 |
|-----------------|-----------------|
| CAMPBELL.       | C. CRESSWELL.   |
| JOHN JERVIS.    | W. ERLK.        |
| FRED. POLLOCK.  | SAML. MARTIN.   |
| J. PARKE.       | CHAS. CROMPTON. |
| E. H. ALDERSON. | R. B. CROWDER.  |

## LAW OF COSTS.

### SECURITY FOR, ON ERROR BY UNSUCCESSFUL PLAINTIFF, A FOREIGNER.

It appeared that the plaintiff, who was a foreigner and resident out of the jurisdiction of the English Courts, had given security for costs to the amount of 400*l.* in an action brought in the Court of Queen's Bench. Upon the defendants having obtained judgment on a special verdict, the costs amounted to 458*l.*, subject to a question pending on the taxation, which might have the effect of increasing the costs. The plaintiff suggested error in law, which the defendants denied, and now moved the Court of Exchequer Chamber that he might give security for costs in error to the satisfaction of the Master of the Court below, and that in the meantime proceedings might be stayed.

*Jervis*, C. J., said,—“It seems to be the opinion of the Court,<sup>1</sup> that this application should be granted, though we have no pre-

cedent. In three or four years this decision will constitute a precedent.” *Bougloux v. Swayne and another*, 3 Ellis & B. 829.

## CONSTRUCTION OF STATUTES.

### EQUITY JURISDICTION IMPROVEMENT ACT.

#### ADMISSION OF AFFIDAVITS WHERE EVIDENCE TAKEN ORALLY.

In a cause, the defendant elected that the evidence should be taken orally, and the plaintiff then moved under the 15 & 16 Vict. c. 86, s. 36, for leave to use at the hearing affidavits which had been filed on a former application for an injunction, for a receiver and for payment of money into Court.

The *Master of the Rolls* said—“The meaning of this clause is, that where there are particular facts or circumstances, which the defendant either does not dispute or has no interest in disputing, the Court, notwithstanding the evidence is taken orally, may give liberty to prove them by affidavits. But here, the plaintiff wants to prove his case by affidavits, after the defendant has said ‘I will have it proved orally.’ The plaintiff must specify the particular facts and circumstances which he proposes to prove by affidavits; and I will then dispose of the motion, after asking the defendant what he has to say to it. It may be of great importance to him to be able to cross-examine the witnesses.

“The order to be made under the 37th section will be, that as to particular facts, or a particular set of facts, the plaintiff shall be at liberty to prove them by affidavits.

“It is obvious, that the Act does not mean to confine the defendant's protection to that afforded under the 29th section.” *Ivison v. Grassiot*, 17 Beav. 321.

## LAW OF EVIDENCE.

### PARTNERSHIP BOOKS, HOW FAR EVIDENCE.

“*Prima facie*, the books of the partnership are evidence among all the partners, for them all and against them all, owing to the agency which prevaded all the partnership transactions. If one partner succeeded in establishing a case of fraud, that would form a ground for an exception from the general rule, nor is there anything in the rule to exclude an allegation of a mistaken or erroneous insertion.” Per Lord Justice *Knight Bruce*, in *Lodge v. Prichard*, 3 De G., M’N. & G. 906.

<sup>1</sup> *Pollock*, C. B., *Maule*, *Cresswell*, and *Crowder*, JJ.; *Alderson*, *Platt*, and *Martin*, BB.



## ATTORNEYS TO BE ADMITTED.

Hilary Term, 1855.

Queen's Bench.

## Clerks' Names and Residences.

## To whom Articled, Assigned, &amp;c.

|  |   |
|--|---|
| Arboun, Sidney, 39, York-terrace, Regent's-park  | R. Few, Henrietta-street                                |
| Arthy, William Ayton, Rochford   | W. Swaine, Rochford                                     |
| Barker, Thomas Jno., 26, Albany-street, Regent's-park; Percy-circus, Pantenville; and Wem    | H. J. Barker, Wem                                       |
| Bennett, Francis Grey, Glossop   | W. Bennet, Chapel-en-le-Frith                           |
| Birchall, Richard, Wigan   | T. Birchall, Preston; W. Ackerley, Wigan                |
| Burne, Henry Holland, 5, Upper Beakley-street  | F. Dowding, Bath; E. White, Gt. Marlborough-st.         |
| Cawley, John, 16, Clifford's-inn; and Castle Northwich                                       | W. W. Blake, Castle Northwich                           |
| Clayton, William, 29, Great Percy-street, Pantenville; and Chesterfield                      | W. Drabble, Chesterfield                                |
| Coham, Arscott, Bickford C., 27, Tysce-street, Wilmington-square; and Poole                  | W. J. F. Marshall, Kettering; W. Paw, Poole             |
| Creswell, Edwd. Jno., 5, Sussex-gardens, Hyde-park   | M. S. Davidson, Spring-gardens                          |
| Croome, Alexander Swayne, The Rectory, Bethnal-green   | J. Stammer, Wainfleet                                   |
| Darley, James Jacob, 31, Upper Gower-street, Euston-square; and Chippenham                   | G. Goldney, Chippenham; J. H. Street, Raymond-buildings |
| Day, George Newton, 59, Doughty-street; and St. Ives   | G. G. Day, St. Ives, Hunts                              |
| DePinasse, Isaac, Hertford   | P. Longmore, Hertford                                   |
| Evgrall, Jno., jun., 12, Wilnot-street, Brunswick-square; Great Coram-street; and Nottingham | J. Bowley, Nottingham                                   |
| Farrant, Robert, 57, Lincoln's-inn-fields  | J. Geare, Exeter  |
| Fisher, George Pemberton, 52, Ebury-street; Poulton-cum-Secombe; and Liverpool               | T. Fisher, Liverpool                                    |
| Greaves, Albert, 11, Mornington-place, Camberwell-new-road                                   | W. Shepherd, Barnsley                                   |
| Griffith, John Robert, Llanrwst  | W. Griffith, Llanrwst                                   |
| Handaley, Robert Burnley   | R. Artindale, Burnley                                   |
| Hawks, Augustus, 3, Crown-square, Southwark; and Hertford                                    | E. R. Spence, Hertford                                  |
| Heath, Richard Child, 8, Chapel-st., Grosvenor-square; and Warwick                           | T. Heath, Warwick                                       |
| Hill, William James, jun., 4, Upper-Chadwell-st., Pantenville; and Melcombe Regis            | J. Garland, Dorchester                                  |
| Hobson, William, Maryport  | E. Tyson, Maryport                                      |
| Hole, Charles Marshall, 9, Powis-place, Great Ormond-st.; and Cowley, near Uxbridge          | C. H. Rhodes, Chancery-lane                             |
| Howell, Marmaduke George, 3, New Diamond-street; and Llanelwedd-hall, Radnor                 | C. R. Lucas, New-square                                 |
| Hughes, Richard Deeton, 5, Mecklenburgh-st.; and Bedford-row                                 | J. L. Smith, Ledbury                                    |
| Jones, John, Oswestry  | E. Williams, Oswestry                                   |
| Jones, John Cox, Leamington-priors   | A. Haynes, Leamington-priors                            |
| Jordan, Charles J. Rufus, 43, Frederick-street, Gray's-inn-road; and Teignmouth              | W. R. H. Jordan, Teignmouth                             |
| Karalake, Henry John, 6, Queen's-square  | H. Karalake, Regent-street                              |
| Kaye, John Pass, 6, Compton-street, East; and Manchester                                     | T. S. James, Edgbaston                                  |
| Kenyon, Edmund Peel, 47, Stanhope-st., Regent's-park; and Liverpool                          | J. B. Lloyd, Liverpool                                  |
| Knight, Anthony, Cornwall-terrace, Regent's-park   | E. B. Church, Southampton-buildings                     |
| Laker, John, jun., Maidstone   | D. T. Sweetlove, Maidstone; C. Morgan, Maidstone        |
| Letchworth, Edward, 6, Kensington-park-gardens   | E. Vices, Reading                                       |
| Longbourne, J. Vickerman, Blackmore-priory   | C. B. Vickerman, South-square                           |
| Mant, George French, Everett-street; and Storrington   | A. Mant, Storrington; G. Waugh, Gt. James-st.           |
| Marrack, Richard, 5, Mecklenburgh-st.; and Truro   | R. M. Modge, Truro                                      |
| Miller, Walter Moore, 16, Queen's-square, St. James's-park; and Norwich                      | H. Miller, Norwich                                      |
| Mogg, Frederick George, 24, Guildford-street, Charter-house-square                           | Vines and Hobbs, Reading                                |

[To be continued.]

## LIVERPOOL BOROUGH COURT.

It is this day (Nov. 27), ordered by her Majesty in Council, that within one month after such order shall have been published in the *London Gazette*, all the provisions of the "Common Law Procedure Act, 1854" (except such as are contained in the sections of the said Act, numbered respectively 2, 17, 34 to 43, both inclusive, 75, 76, 77, 95, 97 to 102 both inclusive, and 104 to 107 both inclusive), shall extend and apply to the Court of Record of the Borough of Liverpool, called the Court of Passage.

And her Majesty is further pleased to order by and with the advice of her Privy Council, that all the powers or duties exercisable by the Court or a Judge under any of the sections of the said "Common Law Procedure Act, 1854," hereby extended and applied to the said Court of Passage, shall, as regards matters and proceedings therein be exercisable and exercised by the Court or assessor; that all the powers or duties exercisable by a Master under any of the sections of the said Act as aforesaid, shall, as regards matters and proceedings in the said Court be exercisable and exercised by the Registrar of the Court or deputy; and that the powers or duties exercisable by a sheriff under any of the sections of the said Act as aforesaid, shall, as regards matters and proceedings in the said Court, be exercisable and exercised within the jurisdiction of the said Court by the Serjeant-at-Law of the said Borough of Liverpool.—From the *London Gazette* of 5th Dec.

## SELECTIONS FROM CORRESPONDENCE.

### CERTIFICATE DUTY.—MILITIA.

SIR,—Under present circumstances it is of course useless to hope for the repeal of the Attorneys' Certificate Duty. Allow me, therefore, to suggest, that the Council of the Incorporated Law Society should use their best exertions to

get an Act passed for the purpose of exempting attorneys and solicitors from liability to serve in the militia.

A SOLICITOR.

[We are not aware that the attorneys and solicitors would generally desire such an exemption to be asked for.—ED.]

### SATURDAY HALF-HOLIDAY.

To the Editor of the *Legal Observer*.

SIR,—Will you kindly inform your readers that a memorial to the Law Society by Law Clerks in favour of the Legal Saturday Half-holiday, is lying for signature at Mr. E. Cox's, Law Stationer, 102, Chancery Lane.

It is hoped that the number of signatures, by showing the strong feeling that exists on the subject, may induce the Law Society to take steps which may accomplish the object desired.

W. R.

## NOTES OF THE WEEK.

### LAW APPOINTMENTS.

*Abraham Haywood*, Esq., Q. C., has been appointed one of the Secretaries of the Poor Law Board, in the room of Lord Courtney, who has succeeded to the Commissionership of the Woods and Forests, lately held by the Right Hon. T. F. Kennedy.

*Harry Porter Curtis*, Esq., has been appointed Town Clerk of Romsey, in the room of Henry Holmes, Esq., deceased.

The Queen has been pleased to appoint *John Montgomery Hill*, Esq., to be Civil Commissioner and Resident Magistrate at Port Elizabeth, Cape of Good Hope.—From the *London Gazette* of Dec. 1.

### EXCHEQUER OF PLEAS.

This Court will, in addition to the days already appointed, hold a Sitting on *Monday*, the 19th day of *December* instant, and will, at such Sitting, proceed in giving judgment in all matters then ready for judgment.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*Gibson v. Woollard*. Dec. 1, 1854.

EQUITY JURISDICTION IMPROVEMENT ACT.  
—SALE UNDER DECREE.—REFERENCE TO  
CONVEYANCING COUNSEL.

Held, that the Court has power under the 15 & 16 Vict. c. 86, s. 56, to exercise a discretion upon estates being ordered to be sold by auction, as to directing a reference to the conveyancing counsel of the abstract, on an offer being made to purchase by private contract.

THIS was an application, by way of appeal from Vice-Chancellor Stuart, that the sale of certain estates, ordered to be sold by auction, and the abstract to be laid before one of the conveyancing counsel, might proceed without the intervention of the conveyancing counsel, upon an offer being made for the purchase of the estates by private contract.

By the 15 & 16 Vict. c. 86, s. 56, it is enacted, that "before any estate or interest shall be put up for sale under a decree or order of the Court of Chancery, an abstract of the title thereto shall, with the approbation of the Court, be laid before some conveyancing counsel to be approved by the Court, for the opinion of such counsel thereon, to the intent that the said Court may be the better enabled to give such directions as may be necessary respecting the conditions of sale of such estate or interest, and other matters connected with the sale thereof."

Bacon in support; Godfrey for the defendants, did not oppose.

The Lords Justices said, that the Act of Parliament conferred a power on the Court to exercise a discretion, and the matter was accordingly referred back, with an intimation of this opinion.

**Vice-Chancellor Kindersley.****Holsgrove v. Hedges.** Dec. 2, 1854.**INSOLVENT. — TITLE OF ASSIGNEES TO LEASEHOLDS WHERE PREDECEASES TESTATOR.**

*Where the assignees of an insolvent omitted to enter up judgment on the warrant of attorney, under the 7 Geo. 4, c. 57, held that they were not entitled to certain leaseholds devised to him, and on his death to his children, upon his predeceasing the testator.*

It appeared that by the will of his father, Mr. Holsgrove was entitled to certain leaseholds, and his children on his death, and that on his becoming an insolvent in 1833, all his property to which he was or might become entitled, was assigned under the 7 Geo. 4, c. 57, and a warrant of attorney was also given to enable the assignees to enter up judgment against him. The insolvent predeceased his father, and his children (of whom the plaintiff was one) became entitled. The assignees had not entered up judgment under the warrant of attorney.

*Sidney Smith* for the plaintiff, contended the leaseholds passed to the children.

*Maine* for the assignees, contra.

The Vice-Chancellor said, that as the assignees had not perfected their title by entering up judgment, under the 7 Geo. 4, c. 57, the plaintiff, and not they, were entitled to the leaseholds.

**Smith v. Smith.** Dec. 5, 1854.**TRUSTEES' ACT, 1850. — VESTING ORDER WHERE CONTINUING TRUSTEE.**

*A vesting order was made under the 13 & 14 Vict. c. 60, ss. 10, 34, upon the death of two trustees of a marriage settlement and of another going out of the jurisdiction, vesting the trust estate in the three new trustees appointed, together with the continuing trustee.*

IN this suit to establish a marriage settlement, by means of an authenticated copy upon the original being lost, an order was sought for the appointment of new trustees under the 13 & 14 Vict. c. 60, in the stead of two who had died and of one who was out of the jurisdiction, and for a vesting order under ss. 10, 34,<sup>1</sup> in them together with the continuing trustee.

<sup>1</sup> Which enact (s. 10), "that when any person or persons shall be seised or possessed of any lands jointly with a person out of the jurisdiction of the Court of Chancery, or who cannot be found, it shall be lawful for the said Court to make an order vesting the lands in the person or persons so jointly seised or possessed, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly

*Dawney*, in support, cited *In re Watts' Settlement*, 9 Hare, 106; *In re Piyer's Trust*, ib. 220.

*Torriano* for other parties.

The Vice-Chancellor said, that a vesting order would be made as asked.

**Vice-Chancellor Stuart.****Allen v. Williams.** Nov. 27, 1854.**SEQUESTRATION. — PERPETUAL CURATE. — NONPAYMENT OF MONEY.**

*Order on motion for the issue of a writ of f. fa. de bonis ecclesiasticis, against a perpetual curate, who had neglected to pay a sum of money pursuant to the order of the Court, after a writ of sequestration had been issued, to which there was returned that he had no lay property.*

THIS was a motion for a writ of *f. fa. de bonis ecclesiasticis*, against the defendant in this case, who was the perpetual curate in the diocese of Manchester, and had neglected to pay to the plaintiff a sum of money, pursuant to the order of the Court. A sequestration had issued, to which there was a return that he had no lay property.

*F. T. White* in support, referred to *Norton v. Pritchard*, Reg. lib. B. 1844, fo. 1568, in which a sequestration issued to the bishop after the return by the Commissioners of Sequestration, that the defendant was a beneficed clergyman.

The Vice-Chancellor said, that the order would be granted on the authority of the case cited, but without expressing any opinion as to its effect on the 13 Eliz. c. 20, prohibiting a clergyman changing his benefice.

**Court of Queen's Bench.****Regina v. South Wales Railway Company.** Nov. 11, 1854.**PUBLIC HEALTH ACT. — LIABILITY OF RAILWAY STATION TO BE RATED TO FULL VALUE.**

*Held, that the platform, station, warehouses, and sheds at the terminus of a railway company are not exempted from being rated to the full net annual value under s. 88 of the Public Health Act (11 & 12 Vict. c. 63), under the exemption of land used "as a railway."*

It appeared that the above railway company

executed a conveyance or assignment of the lands in the same manner for the same estate;" and (s. 34) "that it shall be lawful for the said Court of Chancery, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to direct that any lands subject to the trust shall vest in the person or persons for such estate as the Court shall direct; and such order shall have the same effect as if the person or persons who before such order were the trustee or trustees (if any) had duly executed all proper conveyances and assignments of such lands for such estate."

had constructed a platform, station, warehouse and sheds, &c., at their terminus in High Street, Swansea, and the question now arose on this special case, whether they were liable to be rated to the amount of the full net annual value, or of one-fourth only under the 11 & 12 Vict. c. 63, s. 88.<sup>1</sup>

Sir Fitzroy Kelly and Willes for the respondents; Bramwell and Karslake for the railway company and appellants.

The Court said, that unless the erections in question could be regarded as "land used only as a railway," they were liable to be rated to their full net annual value as other property. With respect to sidings and a certain part of the platform, they might be considered as such land; but with respect to the station and other buildings, they were ancillary to the working of the railway, but formed no part of it, and were not exempt from the full rate.

*Regina v. Poor Law Guardians of Brighton.*  
Nov. 15, 1854.

REMOVAL OF POOR.—FIVE YEARS' RESIDENCE, BREAK IN.

*A pauper was employed as a monthly nurse, and in that capacity was accustomed to go out of the parish in which she resided for a month at a time, but always returned: Held, that this did not constitute a break of residence, and that she was irremovable after a five years' residence in the parish under the 9 & 10 Vict. c. 66.*

THIS was a special case reserved from the Quarter Sessions, quashing an order for the removal of a pauper, who was a monthly nurse, from the parish of Brighton to the parish of Amberley, Sussex. It appeared that she had resided for five years in the former parish, but that she had gone out of the parish in the course of her employment for periods of one month at a time, and the question was, whether this constituted a break in the five years' residence under the 9 & 10 Vict. c. 66.

Cressy and Hurst in support of the order of removal; Johnson, contra.

The Court said, that as the pauper had, when she went out of the parish, an intention of re-

turning as soon as her employment in which she was engaged ceased, and such absence was merely for a temporary purpose, there was no break in her residence at Brighton, and the order of sessions quashing the order of removal must be affirmed.

*Moore v. Wolsey.* Nov. 21, 1854.

ACTION ON POLICY OF LIFE INSURANCE.—  
AVOIDANCE BY SUICIDE.—CONDITIONS.

*By a condition of a life policy it was declared to be void as against the heir or executor if the assured should die by his own hands or the hands of justice, but should be valid so far as regarded any bonâ fide interest acquired by third persons under any assignment by way of a consideration for money or by way of any legal or equitable lien as a security for money—the directors being satisfied as to the existence of such legal or equitable interest. The assured committed suicide, and the policy was in the hands of a trustee for his wife as a security for moneys which he had agreed to invest for her benefit: Held, that the trustee could recover its amount, and it was only necessary to give such evidence as would satisfy any reasonable persons.*

THIS was an action to recover the sum of 999*l.* on a policy of insurance effected with the defendants' office on the life of a Mr. Moore. It appeared that, according to the eighth condition, the policy was declared to be void as against the heir or executor, if the assured should die by his own hands or the hands of justice, but should be valid so far as regarded any *bonâ fide* interest acquired by third persons under any assignment by way of a consideration for money or by way of any legal or equitable lien as a security for money—the directors being satisfied as to the existence of such legal or equitable interest; and by the ninth condition it was provided, that if the assured should after five years die by his own hands, the directors should be at liberty, for the benefit of his family, to pay any sum on the policy not exceeding what it could have been sold for on the day previous to the death. It appeared that Mr. Moore committed suicide in 1852, and that the plaintiff was in possession, as trustee for Mrs. Moore, of the policy, which had been effected as a security for certain sums which Mr. Moore had agreed to invest for her benefit. The directors pleaded there was no assignment for money, that the plaintiff had no legal or equitable lien, and that they were not satisfied as to the existence of any legal or equitable interest, negating the proviso of the eighth condition.

Bovill for the plaintiff; Bramwell for the defendants.

The Court said, that the plaintiff had a *bonâ fide* interest in the policy, as it had been effected as a security for money, and that in order to satisfy the defendants of the plaintiff's interest

<sup>1</sup> Which enacts, that "the said special and general district rates shall be made and levied upon the occupier (except in the cases hereinafter provided) of all such kinds of property as by the laws in force for the time being are or may be assessable to any rate for the relief of the poor, and shall be assessed upon the full net annual value of such property ascertained by the rate (if any) for the relief of the poor made next before the making of the respective assessments under this Act:" "provided that the occupier of any land" "used only as a canal, or towing path for the same, or as a railway, constructed under the powers of any Act of Parliament, for public conveyance, shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof."

it was only necessary to give such evidence as ought to satisfy reasonable persons the case was within the condition. The plaintiff was therefore entitled to judgment.

### **Queen's Bench Practice Court.**

(Coram Mr. Justice Crompton.)

*Ex parte Overseers of Saffron Hill.* Nov. 21, 1854.

**METROPOLITAN BUILDING ACT.—EXPENSES OF PULLING DOWN RUINOUS HOUSE, RECOVERY OF.**

*Parish overseers incurred expenses in pulling down a house rendered ruinous by fire: Held, that they could not enforce the payment of such expenses, under the 7 & 8 Vict. c. 84, ss. 40, 41, 42, by distress warrant against the assignee of the lessor, and who was entitled to the rents, where three years of the lease were unexpired.*

THIS was a motion for a rule nisi for a mandamus on Mr. Corrie, the police magistrate, to issue his warrant of distress under the 7 & 8 Vict. c. 84, ss. 40, 41, 42, to enforce the payment from Mrs. Sarah Woodward of the expenses which the overseers of the parish of Saffron Hill had incurred in pulling down a house, which had become ruinous in consequence of a fire. It appeared that Mrs. Woodward was the assignee of the lessor and entitled to the rents, but that three years of the lease were unexpired. The magistrate having held that Mrs. Woodward was not "the owner of the building entitled to the immediate possession thereof," and accordingly declined to issue his warrant, this application was made.

*Huddleston* in support.

The Court said, that it could not be said Mrs. Woodward was the owner entitled to the immediate possession of the building, and refused the rule.

### **Court of Common Pleas.**

*Edwards v. Hodges.* Nov. 21, 1854.

**AMENDMENT OF PLEA.—STATUTES IN MARGIN.—CUSTOM OF LONDON AS TO RE-ENTRY OF DESERTED PREMISES.**

*Leave given to amend a plea by adding in the margin the Statutes upon which the defence rested to an action, upon payment of the costs of a rule to set aside the verdict for the defendant and for the nonsuit.*

*Quære, whether the practice in the city of London of issuing warrants of re-entry, signed by an alderman, upon a view by a constable of the premises as deserted, is legal?*

THIS was a rule nisi, pursuant to leave reserved, to set aside the verdict for the defendant and enter a nonsuit in this action, which was brought to recover damages for the re-entry by the defendant of certain premises in the city of London, under a warrant signed by an alderman, upon a view of the premises by a con-

stable as deserted. To this there was a plea of not guilty by Statute, but in the margin the only Statute marked was the 11 Geo. 2, c. 19. On the trial before *Jervis*, L. C. J., at the Stings in London, an application was made for leave to amend the plea, by inserting the 3 & 4 Vict. c. 84, s. 13, in consequence of the argument for the plaintiff that the 11 Geo. 2, only applied to cases where a re-entry was reserved by the lease, and also that the warrant should be signed by two justices on a previous view by them. A verdict was directed for the defendant, subject to this motion.

*Dykes*, S. L., showed cause against the rule, which was supported by *Prendergast* and *Harcourt*.

The Court said, that the defendant, having a perfect defence, ought to be allowed to plead it and to amend his plea on payment of the costs of the rule. As the question was very important, whether the practice in the city of London of issuing warrants signed by one justice upon the view of a constable was legal, the rule would stand over in order to be argued by one counsel on each side.

### **Court of Exchequer.**

*Broadwood and others v. Granara.* Nov. 15, 1854.

**INNKEEPER.—LIABILITY OF CHATTEL LENT TO GUEST TO LIEN FOR UNPAID BILL.**

*Held, that a pianoforte lent by the plaintiffs to a pianist with the knowledge of the defendant, an innkeeper, is not subject to his lien for the amount of his guest's bill upon its being left unpaid.*

THIS was a special case for the opinion of this Court, from which it appeared that the plaintiffs, who are pianoforte manufacturers, had gratuitously lent a pianoforte to a pianist staying at the defendant's hotel, in Leicester Place, Leicester Square, and that the defendant was aware the instrument was the property of the plaintiffs, and not of his guest, but on his leaving without discharging the amount of his bill, the defendant claimed a lien on the pianoforte.

*Watson* and *Horatio Lloyd* for the plaintiffs; *Willes* and *Hongman* for the defendant.

The Court said, that the piano was received into the defendant's house for the temporary use of his guest, and was to his knowledge the property of the plaintiffs. He could not detain it unless he was able to establish his lien thereon, as an innkeeper, for his bill, and he could not show such lien unless he was bound to receive it in the first instance and could be indicted for not so doing. It was clear such was not the case, as a piano was not part of the ordinary goods and chattels of a traveller. Besides this, however, he knew the piano was not the property of his guest, and the plaintiffs were therefore entitled to judgment.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—"Still attorneyed at your service."—*Shakespeare.*

SATURDAY, DECEMBER 16, 1854.

### LIMITED LIABILITY PARTNERSHIPS.

THE week before last, we noticed the inconsistency of the opponents of the principle of limited liability; who while they would allow people to advance money by way of capital to a trade at any rate of interest however exorbitant, and to rank as creditors for such advances;—at the same time would prevent the same loan being made on conditions which should render its repayment and rate of interest dependent on the success and profits of the trade. The *loaning* capitalist, in their judgment, may properly be allowed to take security and sweep off everything the trade possesses, in priority to, and to the defeat of, all its ordinary trade creditors. This they hold to be all right and virtuous. But if this loaner agrees *not* to be paid until *after* the trade creditors, and then at a rate of interest dependent on the trade profits;—justice, virtue, and legal morality, say they, require that he be made liable to all the debts to the extent of his last shilling and his last acre!

There are, however, greater follies than this lurking behind. The opponents of such partnerships absurdly enough approve of *special* charters being granted which shall confer a limitation of liability on a few partnerships selected and favoured by the Board of Trade,—while, in the same breath, they denounce the principle of limitation itself, as being opposed to the rules of right, and wholly immoral, and as nothing but a scheme to enable debtors to repudiate their debts. This inconsistency has been appropriately ridiculed as one which justifies a dealing by the Board of Trade in legal indulgences for sins to be committed against

the law; and the Martin Luthers of commerce have been invoked against it. If, say the limitationists, the principle is a sin, why make the Board of Trade into a commercial pontiff to grant pardons for it? Mr. Robert Lowe, the able Secretary of the Board of Control, well uses a similar *argumentum ad absurdum*:—

"Of all systems, the very worst is surely to forbid limited liability, and then vest in a minister holding his seat by a parliamentary majority, the power of suspending the law in favour of such associations as he thinks fit. If the law be right, it ought to be enforced; if wrong, to be repealed. I should as soon think of allowing the Secretary of the Treasury to grant dispensations for smuggling, or the Attorney-General licences to commit murder."

There is no gainsaying this. If to allow a partner to limit his liability is to allow repudiation, charters should no more be granted specially to authorise such a fraud, than there should charters to smuggle: nay, less so—because for the Queen to charter a smuggler would be merely to give up so much of her own taxes, but to charter limited liability, according to the ridiculous argument we are touching on, would be for her Majesty to license robbery on her liege subjects.

One thing certainly is clear, and that is, that the right to associate on terms of limited partnership should be denied to all, and charters by the Queen or Act of Parliament wholly prohibited; or else every set of persons for every legitimate purpose, should be allowed that right,—on giving ample notice to all the world, that their basis of trade was, that they would not be responsible for debts beyond their capital. All insurance companies can and do effect this object by the limiting clause in their po-

licies, and the Courts have supported this condition. Why may not other companies and traders do the same, in some such way, for instance, as by adopting the word "limited," and adding it to their firm or name of trade, and by subsequent full registration of the names of the parties.

Having briefly pointed at the gross inconsistency of the opponents of this principle (mainly we think lawyers) who yet advocate the present Laws of Debtor and Creditor and of Board of Trade Charters, we would touch on one or two more of the leading fallacies which seem to have clouded their perceptions.

"Foreign experience," they say, "may be in favour of this system, but that experience is not applicable to us. We differ," say they, "in capital, position, and so forth, from all other nations." Now this may be very true; but if it is, the arguments they produce against its being applicable here should all be *discriminative*;—pointing out the difference between other countries and ours—and not arguments essentially and exclusively cosmopolitan and universal. They should be arguments necessarily local. A general argument is destructive. An exception, they say, proves the rule. True; but to make it an exception you must show *exceptive* reasons. Their arguments all the while are, nevertheless, one and all universal. Some of them we have given. Take, for instance, the last, viz., that limitation permits a debtor to repudiate his debt. That objection, if true, must apply to every place under the sun. So of the next great delusion, that they would lead to overtrading and great speculation by the limited company. If foreign experience is to be no rule here, as they say, then they must show why limited liability would not allow a man to *repudiate*, as they call it, in foreign parts, or not lead to excessive overtrading there as well as here. This they do not pretend to attempt.

Having come across this last most favourite stalking horse (that "foreign experience is no rule"), we will take a short ride on it and try its paces a little.

First, trying it *à priori*, and reasoning theoretically. To enable a company to overtrade, you must endow it with large credit. Unlimited companies have this large credit. People trust them, knowing, perhaps, that they are making ducks and drakes with their money, because of their share list; but limited companies have no credit, except so far as they are known to be trading prudently. They cannot overtrade, at any

rate, not till after years of good conduct have got them a good name.

This brings us to our second *à posteriori* observation from experience, viz.,—that the only *limited* company we recollect to have heard of as having failed was the Copper Miners' Company which has figured much of late in the Courts. Its charter was, we think, dated in Charles the Second's time or thereabouts. Two or three centuries of credit and good name were necessary to enable it to outrun its constable. As to insolvent *unlimited* Joint-Stock Banks, &c., on the other hand, their name is legion; and we have only to look to the winding-up reports for the history of their credit.—They have been as plentiful as weeds, and more noxious.

A very interesting fact has lately come to our knowledge. There is a difficulty in the United States (where there is no funded debt) to settle on what investments trustees shall be allowed to place trust money. This year the conservative state of Massachusetts has enacted that trust moneys may be invested in *limited* liability companies. A fair corollary this to the evidence given by many Americans that they have not known an instance of limited liability companies failing without leaving assets enough to pay their external creditors. So much for the *excessive-speculation* bugbear.

As we learn that Government have decided to bring in some bill on the subject this Session, it is right we should clear up the existing delusions as far as we can, and we will return to the subject shortly.

[The remainder of the Summary of Evidence which was deferred from p. 87, *ante*, will be found in the next Article.]

#### EVIDENCE ON LIMITED LIABILITY PARTNERSHIPS.

[Concluded from page 87, *ante*.]

IN a recent Number (p. 81, *ante*) we offered some observations to the consideration of our readers, on the general policy of the proposed alteration of the Law of Partnership, and stated the substance of a large part of the evidence laid before the Mercantile Law Commissioners. We now conclude that statement, and in another Article have added some further topics which appear worthy of consideration, as well by the Public as the Profession:—

No. 19. *M'Larren, David*, Merchant, *Leith*. (Selected by the Chamber of Commerce of *Leith*.)

P.P. and J.S.A. 3. Liability of non-acting partners may be limited in any business, (11) without special authorisation, (14) to declared contribution; profits not to be refunded. 16. Shares transferable with registration. 18. No compulsory dissolution on loss. 20. Compulsory registrations of partners' names and limited contributions, (21) not of accounts.

No. 67. *Mill, John Stuart, London.* Favourable to authorising limitation of liability.

No. 49. *Miller, Richard, Merchant, Leith.*

P.P. 3, 11. Liability of non-acting partners may be limited without special authorisation, in any business (14, 15) profits withdrawn to be retained. 16. Shares when paid up, transferable. 20. Registration of contributions, and perhaps of names, of limited partners, (21) not of accounts.

J.S.A. 11. Complying with general regulations, to be entitled to sanction of Board of Trade, so as to become legally constituted with limited liability.

No. 3. *More, J. S., Professor of Scotch Law in the University of Edinburgh.*

P.P. 3 and 5. Liability of non-acting partners may be limited, (11) without special authorisation, in any business. 14. Profits withdrawn to be retained. 16. Shares transferable. 18. No compulsory dissolution on loss. 20. Registration of names, and limited contributions (if any) in all partnerships, (21) not of accounts.

No. 60. *Mowbray, Robert, jun., Banker, Leith.* (Selected by the Chamber of Commerce of Leith.)

P.P. and J.S.A. 11. The power of limiting liability should be confined to Parliament. 12. In banks and life assurance societies there should be no limitation of liability.

No. 45A. *Neale, E. Vansittart, Barrister-at-Law, London.*

P.P. and J.S.A. 3. Companies may be formed in which individual liability limited to declared contribution, of which at least one-half to be paid up; no dividends out of capital; precautions to insure notice of constitution and amount of capital. Loans to be authorised entitling lender to a share of profits, to be postponed to trade debts, and not demandable without notice of (say) 12 months, without involving liability, unless lender has knowingly received dividends out of capital, or interfered in the business. All loans upon which more than 5 per cent. interest is taken, to be postponed to trade debts.

No. 37. *Nicol, Alexander, Dean of Guild, Aberdeen.*

P.P. 3. Limited responsibility should not apply to these.

J.S.A. 3. Limitation of liability may be applied to partnerships with a larger number of partners, but only when so granted by Parliament; (14) to extend to profits of three years. 16. Shares transferable, name of seller to be advertised, and his liability to continue till next annual balance. 18. When half the capital is lost, company to be wound up, or liability to be unlimited. 4, 20. Registration

and publication of names and number of shares of partners. 21. Publication and Government audit of accounts.

No. 43. *Norman, George Warde, a Director of the Bank of England, London.*

P.P. 3, 19. Liability of non-acting partners may be limited in any business. 16. Shares transferable. 19. Registration of constitution, (21) not of accounts. 15, 16. Refers to foreign experience for details.

J.S.A. 11. To be formed only by special authorisation of some public body, acting on definite rules.

No. 20. *Overstone, Lord.*

No. 20A. *Overstone, Lord, and Prescott, William G., of the firm of Prescott, Grote, & Co., Banker, London.*

P.P. and J.S.A. 11. Unlimited liability to continue the established principle of commercial legislation; any suspension to be permitted only under the special authority of Board of Trade or Parliament, and for a limited period.

No. 54. *Owen Joseph, Corn Merchant, Manchester.* (Selected by the Chamber of Commerce of Manchester.)

P.P. 1, 3. Unlimited liability to continue.

J.S.A. 1, 2, 3. Limitation of liability desirable, but a definite amount of paid-up capital to be certified and published. Accounts strictly verified at given periods, (21) under the inspection of an official.

No. 7. *Perry, James, late Warehouseman and Merchant, Dublin.* (Selected by the Chamber of Commerce of Dublin.)

P.P. and J.S.A. 3. Liability of all or any partners may be limited in any business without special authorisation. 14. Profits withdrawn in last three years beyond legal interest, to be liable to be refunded. 16. Shares transferable, but liability at transfer to continue for (say) two years. 18. Compulsory dissolution on loss of half the capital. 20. Registration of constitution, (21) and of annual accounts.

No. 65. *Powles, A. W., Merchant, Liverpool.* (Selected by the Chamber of Commerce of Liverpool.)

P.P. and J.S.A. 3, 17. Liability of non-acting partners may be limited in any business, (11) without special authorisation, (14) to declared capital, to be all paid up at once; profits divided to be retained. 16. Shares transferable, with publicity. 17, 18. On loss of a large portion of the capital, compulsory dissolution, or replacement of the deficiency. 20. Registration of term, names of all partners, sums paid down by limited partners; the signature should indicate the limitation. No compulsory publicity of accounts.

No. 30. *Prescott, Henry James, a Director of the Bank of England, London.*

P.P. 1—4. Limitation of liability of non-acting partners in any business (as in partnerships en commandite) might be more extensively introduced; (11) but for the present the privilege to be sanctioned in each case by Board of Trade or other authority. 20—22. Great publicity an essential condition.

No. 64. *Richards, G. K., Counsel to the*



Speaker of the House of Commons, and Professor of Political Economy in the University of Oxford.

J. S. A. Liability may be limited as to all or any members, without special authorisation; publicity by registration of names and residences of shareholders, amount of capital paid-up and subscribed, assets and liabilities of the undertaking.

P. P. Loans of capital at a rate of interest contingent on profits (the commandite system) should be permitted.

No. 62. *Robertson, C.*, Merchant, *Liverpool*. (Selected by the Chamber of Commerce of Liverpool).

P. P. and J. S. A. 3, 19. Liability of all or any partners may be limited in any business, (11) without special authorisation, (14, 15) to declare capital, to be paid up before registration; past profits not to be followed. 16. Shares transferable on due publicity. 18. On loss of certain proportion of capital compulsory dissolution, or replacement of original capital, or re-registration with the diminished capital. 20. Name of partnership to indicate limitation; the firm, the names of the unlimited partners, and sums subscribed by limited partners to be registered and published. 21, 22. No compulsory publicity of accounts.

No. 23. *Robertson Lawrence*, Cashier of the Royal Bank of Scotland, *Glasgow*.

3. No limitation of liability in any copartnership, of many or few partners, of large or small means. 11. If the privilege be granted at all, Parliament is a safer medium than the Board of Trade.

No. 10. *Rose, Sir George*, a Master in Chancery, *London*.

P. P. and J. S. A. 3. Liability of all or any partners may be limited, without special authorisation, in any business, (14) to declared contribution. 15. Fair profits withdrawn to be retained. 16. Shares not transferable otherwise than at present. 20. Publication of constitution (21) not of accounts.

No. 53. *Slagg, John*, Merchant, *Manchester*. (Selected by the Chamber of Commerce of Manchester.)

P. P. 1. Unlimited liability should not be altered.

J. S. A. 11. Board of Trade should not have power to confer limited liability. All should be established on one common principle of unlimited liability.

No. 16. *Slaney, R. A.*, late M. P. for Shrewsbury, *London*.

P. P. 3. Liability of non-acting partners may be limited, without special authorisation, in any business, except (at first) banking and insurance, (14) to registered share, (12) but in banks of issue to four or six times their amount. 16. Profits withdrawn not to be refunded, except, in case of fraud, those in last preceding three years. 16. Shares transferable. 18. Compulsory dissolution on loss of 50 per cent. 20. Compulsory registration of constitution, (21) and of periodical accounts.

J. S. A. 3. Of not more than 1,000 part-

ners, and capital not exceeding 50,000*l.*, may be formed without special authorisation; liability of non-acting members may be limited as in P. P., (8) that of managers and directors to double or four times registered shares. 11. Board of Trade to grant charters of limited liability at less cost to parties proving a fair case under general rules.

No. 59. *Smith, William, jun.*, Solicitor, *Sheffield*.

P. P. 3. To be allowed the benefit of the commandite principle upon giving publicity to the amount of capital, the parties by whom, and shares in which contributed, &c. Limited liability for non-acting partners only. 4. Registration in municipal boroughs, or county. 16. Shares transferable.

No. 6. *Stewart, James*, Barrister-at-Law, Secretary to the Copyhold Commission, *London*.

P. P. 3. Liability of non-acting partners may be limited, without special authorisation, in any business. 14. Profits withdrawn to be retained. 16. Shares transferable if published. 18. No general provision for dissolution on loss. 20. Registration of constitution. 21. Publication of periodical accounts.

J. S. A. 11. Power in Board of Trade injurious. A general alteration in the law, giving giving power to partners by taking certain steps to limit their liability.

No. 2. *Swanston, Clement Tudway*, Queen's Counsel, *London*.

Refers to his evidence, given in 1836 (which recommends "the admission of partnerships in which the liability of each partner should be limited by a contract, to which publicity is given before the parties can act upon it." Mr. H. Bellenden Ker's Report, 1837, p. 54.)

No. 14. *Thomson, William*, Shipbroker, *Leith*. (Selected by the Chamber of Commerce Edinburgh.)

P. P. 3. Liability of non-acting partners may be limited, without special authorisation in any business, (14) to declared contribution; but profits withdrawn during last preceding six years to be liable to be refunded. 16. Shares transferable with registration. 18. No compulsory dissolution on loss. 20. Limitation to be indicated by name; registration of names and contributions of limited partners, (21) not of accounts.

J. S. A. Same as with respect to P. P. 11. All public joint-stock companies to be established on one common principle as to capital and limited liability.

No. 44. *Taney, William Henry*, Master in Chancery, *London*.

P. P. Liability not to be limited.

J. S. A. Should any have limited liability? And should not all public partnerships be subject to the control of a public board with large powers?

No. 21. *Turner, J. Aspinall*, Merchant, *Manchester*. (President of and selected by the Manchester Commercial Association.)

P. P. 3. Liability of non-acting partners (not exceeding two) may be limited, in any business to cash contributions, if amounting together

to 5,000*l*. 14. Reserved fund to be formed out of profits between 5 and 15 per cent., and profits beyond 15 per cent. within previous five years, to be liable to be refunded. 16. Shares transferable if capital intact, but liable to refund profits to continue as if no transfer. 18. When one-fourth of capital lost, to be replaced or partnership dissolved. 20. Registration and publication of partners' names and cash contributions, (21) but not of accounts.

J. S. A. 11. Authorisation of Board of Trade to be requisite for limitation of liability; to be fixed for banks of issue at four times—other banks at double—insurance societies at ten times—the paid-up capital.

No. 13. *Valentine, William*, of the firm of Richardson, Brothers, & Co., *Belfast*. (President of and selected by the Chamber of Commerce of Belfast.)

P. P. 3. Liability of non-acting partners may be limited without special authorisation in any business, except banking and insurance, (14) to declared contribution, but all profits withdrawn beyond five per cent. per annum to be liable to be refunded. 16. Shares transferable with consent of the various partners. 20. Registration of names and total contribution of limited partners, (21) not of accounts.

J. S. A. Same as with respect to P. P., (17) but with compulsory dissolution on loss of 75 per cent., (21) and periodical statements of accounts to be furnished to Board of Trade.

No. 29. *Weguelin, Thomas Matthias*, Deputy Governor of the Bank of England, *London*.

P. P. 4 and 14. Limitation of liability may be permitted on certain conditions, viz., capital paid up; books kept in prescribed form; no dividend till liabilities to a given date run off; registration unnecessary. 19. Limited partner, if he act, to do so manifestly as agent, and not responsible. 14. Partnership terminable, as to public, by notice in Gazette; (16) as to other partners only with their consent. 18. No compulsory dissolution on loss.

J. S. A. 3. For banking or insurance, liability may be limited to (say) double the subscribed capital. 11. Interference of Board of Trade, and necessity for special Act of Parliament, objectionable.

## OPENING OF PARLIAMENT.

HER MAJESTY opened Parliament in person on Tuesday last, the 12th instant. The Royal Speech was almost entirely composed of topics relating to the War. The only exception to be found is in the following passage:—

"Although the prosecution of the War will naturally engage your chief attention, I trust that other matters, of great interest and importance to the general welfare, will not be neglected."

Whether these other matters will in any respect relate to the alteration or amend-

ment of the law, will soon appear. We observe that notice has been given by Mr. Hadfield of questioning the Government whether a Bill is intended to be brought in relating to the abolition of the Ecclesiastical Courts, or to transfer the testamentary jurisdiction to any other Court; and to make one probate of will, or grant of administration, of sufficient authority over the entire property of the deceased in all parts of the kingdom, the colonies, or elsewhere.

Mr. Loeke King has also given notice of a motion for papers relating to the Statute Law Commission.

Mr. Beresford has given notice of a Bill relating to the Succession Duty; and Mr. Williams, at an early day, will call the attention of the House to instances of injustice in assessing the Probate Duty.

The Registration of Dishonoured Bills of Exchange Bill, No. 2, presented by Lord Brougham, and ordered to be printed on the 7th August last, has just been issued with the papers of the House of Lords. It does not bear the date of the present Sessions.

Mr. R. Palmer has given notice of a Bill for the more speedy Trial of Persons charged with the offence of Larceny to a small amount.

A Bill authorising Foreigners to enlist and serve as Officers and Soldiers in her Majesty's Forces, has been introduced by the Duke of Newcastle.

And a Bill to enable her Majesty to accept the services of the Militia out of the United Kingdom has been brought in by Lord Palmerston.

It may reasonably be presumed that nothing of any importance will take place before Christmas, except in relation to the conduct of the War. Whatever Bills it may be necessary to pass regarding the militia, or other warlike preparations, will probably occupy the time of Parliament until Christmas.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### INCUMBERED ESTATES (WEST INDIES).

17 & 18 VICT. c. 117.

Short title of Act; s. 1.

Act how to come into operation; s. 2.

Interpretation of certain terms in this Act; s. 3.

Three Commissioners to be appointed under Sign Manual; s. 4.

Style of Commissioners; s. 5.

- Residence of Commissioners ; s. 6.  
 Power to appoint local Commissioners ; s. 7.  
 Commissioners to have a common seal ; s. 8.  
 Power to appoint and remove secretary, clerk, &c. ; s. 9.  
 Duration of office and powers of Commissioners ; s. 10.  
 Commissioners incapable of sitting in Parliament ; s. 11.  
 Salaries of Commissioners, &c., and out of what funds paid ; s. 12.  
 Powers of Commissioners to fix scale of fees ; s. 13.  
 Expenses of Act how provided for ; s. 14.  
 Oath of Commissioner ; s. 15.  
 Publication of appointment of Commissioners ; s. 16.  
 Commissioners to be a Court of Record ; s. 17.  
 Powers of Commissioners, by whom to be exercised ; s. 18.  
 Commissioners to frame and promulgate forms of application, &c. ; s. 19.  
 Commissioners to make general rules for regulating proceedings under this Act ; s. 20.  
 Rules to be laid before Privy Council ; s. 21.  
 Power to Commissioners to summon witnesses, &c. ; s. 22.  
 Power to Commissioners to proceed upon affidavits, and to appoint persons to take affidavits and examinations ; s. 23.  
 Power of Commissioners to direct trials and issues of fact ; s. 24. \*  
 Power of Commissioners to enforce orders ; s. 25.  
 Power of Commissioners to sell land in colonies, upon application of the incumbrancer ; s. 26.  
 No application to be entertained unless costs of any previous application paid ; s. 27.  
 Application to be made by legal or beneficial owners ; s. 28.  
 When incumbrance subject to limitations, the first person entitled, &c., to make application ; s. 29.  
 Form of application, and to whom to be made ; s. 30.  
 Duty of Commissioners on application for sale ; s. 31.  
 Restrictions on sale ; s. 32.  
 Regard to be had to yearly tenancies and other temporary interests ; s. 33.  
 Power to sell, subject to annual sums, and also to incumbrances, in certain cases ; s. 34.  
 Sale by Commissioners ; s. 35.  
 Saving of certain rights ; s. 36.  
 Payment of purchase-money ; s. 37.  
 Effect of conveyance ; s. 38.  
 Commissioners may order delivery of counterparts of deeds, &c., and possession, to purchaser ; s. 39.  
 Where an incumbrancer purchases, Commissioners may authorise payment into the bank of balance of purchase-money, after retaining amount of incumbrance ; s. 40.  
 Application of purchase-money ; s. 41.  
 Application of money where owner not absolutely entitled ; s. 42.  
 Appointment of new trustees ; s. 43.  
 Provision where a part only of land subject to an incumbrance is sold ; s. 44.  
 Provision for setting aside moneys to meet incumbrances ; s. 45.  
 No payment, not being in full, to affect right of incumbrancer for balance, and no payment in respect of any incumbrance to impair remedy over ; s. 46.  
 Purchase money may be invested ; s. 47.  
 Power to Commissioners to order money to be paid into Court of Chancery ; s. 48.  
 Lands included in different applications and different interests in the same land may be included in the same sale ; s. 49.  
 Provisions for persons under disability ; s. 50.  
 Proceedings not to abate by death, &c. ; s. 51.  
 Costs ; s. 52.  
 Sales under this Act may be made notwithstanding proceedings in any other Court ; s. 53.  
 After order by Commissioners for sale, proceedings for a sale under decree to be stayed, and no suit, &c., to be commenced without leave of Commissioners, pending proceedings under this Act ; s. 54.  
 On application for sale of an undivided share, or after sale, Commissioners may, on application of party interested, and giving notices and hearing parties, make order for partition ; s. 55.  
 On application for sale or after sale, Commissioners, on application of party interested, and with consent, may make order for exchange ; s. 56.  
 Partition may be made of land where shares are not subject to be sold under this Act ; s. 57.  
 Exchanges may be made of lands not subject to be sold under this Act ; s. 58.  
 Division of intermixed lands not subject to be sold under this Act ; s. 59.  
 Notices of partitions, exchanges, and divisions to be given ; s. 60.  
 Conveyance, assignment, and orders for

Partition, exchange, or division and allotment, conclusive; s. 61.

Proceedings before Commissioners not to be restrained by injunction, &c.; s. 62.

Commissioners not to be liable in respect of acts done *bond fide*; s. 63.

Penalty for false swearing; 64.

Orders may be reviewed by Commissioners; and appeal to Privy Council; s. 65.

Power of Commissioners to make alteration; s. 66.

Orders to be submitted to legislature of colony, and confirmed by Queen in Council; s. 67.

Order may be altered; 68.

Act how to come into operation; s. 69.

The following are the Title and Sections of the Act:—

An Act to facilitate the Sale and Transfer of Incumbered Estates in the West Indies.

[11th August, 1854.]

Whereas it is expedient that facilities should be given for the sale and transfer of incumbered estates in the several West India Colonies mentioned in the schedule hereto: be it enacted therefore as follows:—

*Preliminary.*

1. This Act may for all purposes be cited as "The West Indian Incumbered Estates' Act, 1854."

2. This Act shall not take effect until her Majesty has, by order in Council to be made as hereinafter-mentioned, directed the same to come into operation in one or more of the said scheduled colonies.

3. In the construction and for the purposes of this Act the following terms shall have the respective meanings hereinafter assigned to them; that is to say,

"Land" shall extend to sugar and other plantations, messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, and shall include and denote that estate or interest in any hereditaments which any person applying for a sale is possessed of, is entitled to, or has any mortgage, charge, or incumbrance upon:

"Incumbrance" shall mean any debt, portion, legacy, or other sum of money constituting a charge or lien on land, or raisable out of land:

"Incumbrancer" shall mean any person entitled to such incumbrance, or entitled to require the payment or discharge thereof:

"Possession" shall include the receipt of the rents and profits:

"Owner" shall mean any person entitled in possession to land, or the receipt of the rents and profits thereof, or who would be so entitled if there were no incumbrances on such land, for a term of not less than 30 years unexpired, or for an estate or interest for his

own life, or for an estate or interest determinable on the dropping of any other life or lives, or for any greater estate or interest:

"Person and owner" shall extend to a body politic or corporate as well as to an individual:

"Commissioners" shall mean the persons appointed Commissioners for the sale of incumbered estates in the West Indies, as hereinafter-mentioned.

*Constitution and Powers of Commissioners.*

4. It shall be lawful for the Commissioners of her Majesty's Treasury for the time being to appoint any number of persons, not exceeding three, to be Commissioners under this Act during her Majesty's pleasure, and upon every vacancy in the office of any such Commissioner in like manner to appoint some other person to such office; and the said persons so to be from time appointed shall be Commissioners for the execution of this Act, and shall be styled "The Commissioners for Sale of Incumbered Estates in the West Indies."

5. Of the above Commissioners one shall be styled "The Chief Commissioner," and the other or others shall be styled "The Assistant Commissioner or Commissioners."

6. The chief Commissioner shall be a barrister-at-law of not less than ten years' standing, and shall reside in England; the assistant Commissioners shall from time to time be employed in the execution of this Act in such manner as the chief Commissioner may direct.

7. For the purpose of aiding in the execution of this Act, the governor or other person administering the government of any colony may appoint to be local Commissioners for such colony during pleasure any number, not exceeding three, of the following persons; that is to say,

Any Vice-Chancellor, Chief Justice, Judge, Attorney-General, Solicitor-General, or other legal or public officer holding any office in the colony in which such appointment is made; or

Any other person usually resident in such colony.

8. The Commissioners shall cause to be made for their commission such seal or seals as they may require, and shall cause to be sealed with one of such seals all orders, conveyances, and other instruments proceeding from the Commissioners in pursuance of this Act; and all such orders, conveyances, and other instruments, or copies thereof, purporting to be sealed with such seal of the Commissioners, shall be received in evidence, without any further proof.

9. The Commissioners of her Majesty's Treasury may from time to time appoint and remove a chief secretary, and also such assistant secretaries, clerks, messengers, and officers as they may deem necessary for the purposes of this Act.

10. The offices of the Commissioners, and all powers, rights, and privileges pertaining thereto, shall continue and be in force only for

a period of six years next ensuing the date at which this Act takes effect, and from thenceforth until the next Session of Parliament.

11. No Commissioner shall during his continuance in office be capable of being elected or of sitting as a member of the House of Commons.

12. There shall be paid out of moneys to be provided by Parliament,

To the chief Commissioner, two assistant Commissioners, chief secretary, and to all such assistant secretaries, clerks, messengers, and other officers as may be appointed by the chief Commissioner in England, such salaries as the Commissioners of her Majesty's Treasury may from time to time recommend, so that the same do not exceed in the following cases the sums hereinafter mentioned; that is to say,

In the case of the chief Commissioner, the sum of 2,000*l.* by the year :

In the case of each assistant Commissioner, the sum of 1,500*l.* by the year :

The salaries of the local Commissioners, and of all such assistant secretaries, clerks, messengers, and officers as may be appointed under this Act in any colony, shall be paid out of moneys to be provided by the colonies as hereinafter mentioned.

13. The Commissioners may fix such scale of fees to be paid in respect of proceedings under this Act, both in England and the colonies, as they think fit, but all fees to be paid in any colony shall be subject to disallowance or alteration by the legislature of such colony.

14. All expenses incidental to carrying this Act into execution, and not being such salaries as aforesaid, or defrayed by fees, shall be paid for, if incurred in England, out of moneys to be provided for that purpose by Parliament, and if incurred in any colony, by moneys to be provided for that purpose by the legislature of such colony in manner hereinafter mentioned.

15. Every Commissioner and local Commissioner appointed under this Act shall, before he enters upon the execution of his office, take the following oath; that is to say,

"I, A. B., do swear, That I will faithfully, impartially, and honestly, according to the best of my skill and judgment, fulfill all the powers and duties of a Commissioner under an Act passed in the year of the reign of Queen Victoria, intituled [*here set forth the title of this Act*]."

And such oath shall, in the case of the chief Commissioner and assistant Commissioners, be taken before one of the Judges of her Majesty's Superior Courts in England, and in the case of any local Commissioner be taken before the Judge of the Supreme Court of the colony for which he is appointed Commissioner.

16. The appointment of every Commissioner and local Commissioner shall be published as follows; that is to say,

The appointment of the chief Commissioner and assistant Commissioners, in the *London Gazette* :

The appointment of any local Commissioner, in the newspaper of the colony in which Government notices are usually published : And no Commissioner or local Commissioner shall act until publication as aforesaid has been made of his appointment.

17. The Commissioners shall constitute one Court of Record, having for the purposes of this Act, and subject to the provisions thereof, jurisdiction throughout England and any colony or colonies within which this Act comes into operation; and all proceedings, inquiries, suits, or trials to be taken, made, or had under this Act, and all investigations of any matters or things arising out of or incidental to any such proceedings, inquiries, suits, or trials, may, subject to the provisions hereinafter contained, be at any stage or at any time transferred from England to any colony, or from any colony to England.

18. All Acts, matters, and things which the Commissioners are by this Act empowered to do, and all the powers and authorities hereby given to them, may, under any order of the Commissioners made for that purpose, be done or exercised by the person or persons hereinafter mentioned; that is to say,

In England, by the chief Commissioner, either alone or with one assistant Commissioner : In any colony, by any assistant Commissioner, either alone or jointly with the local Commissioners of such colony, or any one of them, or by the local Commissioners or Commissioner of such colony, or any two of them, if more than two.

19. The Commissioners shall frame, and cause to be printed and circulated or otherwise promulgated, as they see occasion, forms of application and directions indicating the particulars of the information to be furnished to the Commissioners when any application is made to them under this Act, with reference to title, incumbrances, and the circumstances of land, and such other information as in the judgment of the Commissioners may assist them in forming an opinion on such application, and also such other forms and directions as the Commissioners may deem requisite or expedient for facilitating proceedings under this Act.

20. The Commissioners shall, having regard to the laws and usages of each colony in which the same are intended to take effect, frame rules for the following purposes; that is to say,

For regulating the course of procedure under this Act; the several powers and duties of the assistant and local Commissioners; the conduct of proceedings in England and the colonies; and the transfer thereof from England to the colonies, and from the colonies to England :

For securing the prompt and due distribution and payment of the moneys received upon sales under this Act amongst or for the benefit of the persons entitled thereto :

For the protection, in respect of such moneys, of the interest of persons under disability, and for future interests :

For the protection of the interests of absent parties, and of the interest of parties in cases where the proceedings are transferred from England to the colonies, or *vice versa*.

Generally for the due execution of the powers vested in the Commissioners under this Act, and for giving effect to the provisions and objects thereof:

And all rules so made shall, unless disallowed in manner hereinafter-mentioned, have the same force as if they had been enacted by Parliament.

21. All rules made under the above authority shall be laid before her Majesty in Council, and it shall be lawful for her Majesty by order in Council to disallow the same, and any rule so disallowed shall from the date of its disallowance be void, but all matters and things previously done in pursuance thereof shall have the same validity as if no such disallowance had taken place.

22. The Commissioners shall have power—

1. To require by summons under their seal the attendance before them, at a time and place to be mentioned in such summons, of all such persons as they may think fit to examine in relation to any question or matter depending before them:

2. To require by a like summons all such persons to produce before them all deeds, books, papers, documents, and writings relating to such question or matter.

3. To examine upon oath, or, in the case of persons allowed to make affirmation or declaration in lieu of an oath, upon affirmation declaration (as the case may require), all persons attending under such summons, and all persons attending voluntarily as witnesses.

23. The Commissioners may, in their discretion, receive in evidence affidavits; and such affidavits may be made in any part of her Majesty's dominions before any person empowered by law to take affidavits, and in any other part of the world before any person authorised by order under the seal of the Commissioners to take affidavits; and the Commissioners may by a like order under their seal authorise any person in any part of the world to examine, in such manner as they think fit, any witness or witnesses in relation to any application to or matter pending before the Commissioners, and to administer oaths, affirmations, or declarations for the purpose of such examination.

24. The Commissioners in relation to any matters or question before them shall have power—

To send cases for the opinion of any Court of Law or Equity sitting in England or in any colony within their jurisdiction:

To send questions of fact to be tried, in England by a jury, or in any such colony as aforesaid either by a jury or in any other manner in which questions of fact are usually tried in such colony.

25. In all cases within their jurisdiction the Commissioners shall, with respect to the following matters, that is to say,

The enforcing the attendance of persons summoned to give evidence,

The enforcing the production of deeds, books, papers, documents, and writings,

The punishing persons refusing to give evidence, or guilty of a contempt,

The enforcing any order whatever made by them under any or the powers or authorities of this Act,

Have in England all such powers, rights, and privileges as are possessed by the High Court of Chancery for such or the like purposes in relation to any matter depending in such Court, and have in any colony, within their jurisdiction all such powers, rights, and privileges as are possessed by the Supreme Court of Judicature in such colony for such or the like purposes in relation to any matter or thing depending in such Court; and it shall be lawful for the Commissioners in any such colony as aforesaid, either to carry into effect such powers, rights, and privileges by officers appointed by themselves, or to request any such Court of Judicature as aforesaid, or any officer thereof, to enforce any orders made by them, and such Court or officer shall thereupon enforce the same accordingly.

*Sales by Commissioners, and Distribution of Purchase-moneys.*

26. Subject to the restrictions hereinafter mentioned, where any land situate in a colony within the jurisdiction of the Commissioners is subject to any incumbrance, the Commissioners shall have power to sell the same, or such part thereof as they think fit, upon application made to them in manner hereinafter mentioned by the owner of such land or any incumbrancer thereon.

27. Where an application for a sale of any such land as aforesaid has been made to any competent tribunal in the colony, and dismissed with costs, no application by the same party for a sale of the same land or any part thereof shall be entertained by the Commissioners unless it is shown that such costs have been paid.

28. Where any such land as aforesaid is vested in any person or persons in trust for any owner, an application for the sale thereof may be made by such owner, either with or without the concurrence of such trustee or trustees, or by such trustee or trustees with the concurrence of such owner.

29. Where any incumbrance is vested in a trustee or trustees, or settled on divers persons in succession, the Commissioners may act on an application made by such trustee or trustees, or by the first person entitled to the income of such incumbrance, or by any other person having, in the opinion of the Commissioners, an amount of interest in the incumbrance sufficient to justify his making an application for a sale.

30. Every application for a sale of land under this Act shall be in such form as the Commissioners direct, and may, subject to any rules to be framed by the Commissioners, be made, at the discretion of the applicant,

either to the Commissioners acting in England or in the colony in which such land is situate.

31. The Commissioners shall, upon the receipt of such application as aforesaid, make such inquiries as to the circumstances of the land in respect of which the same is made, and of the parties interested therein, either as incumbrancers, owners, or otherwise, and direct such notices to be given as they think necessary to enable them to form a judgment as to the expediency of a sale, and shall hear by themselves, their counsel or agents, any persons interested in such land who may apply to them to be heard, and shall, upon the conclusion of such inquiries, and after hearing such parties, if any, as aforesaid, make such order in the premises as to the allowance or disallowance of a sale of such land as they think just.

32. No sale shall be made by the Commissioners of any land in the cases following :

Where the amount of yearly interest on the incumbrances attaching to the land in respect of which any application is made, and to any other land subject to the same incumbrances, does not exceed one-half of the net yearly value of such land and other land, if any, such yearly value to be calculated on the average profits or income derived therefrom after deducting all necessary outgoing during the preceding seven years, or during such other period as the Commissioners may, having regard to any special circumstances, think fit :

Where, for any reason whatever, it appears to the Commissioners unjust or inexpedient that a sale should be made.

33. In making any sale of land under this Act, the Commissioners shall have regard to the interests of any yearly tenants or other persons, not being incumbrancers, who may be entitled for the time being, by themselves or their agents, to receive or retain the produce of such land or of any part thereof, and they may, in their discretion, deal with such interests in such one of the two following ways as they think just ; that is to say, they may either make the sale subject to such interests, or may cause such interests to be valued at a gross amount, and treat the amount so valued as an incumbrance, assigning thereto such priority as they think fit.

34. In cases where any land to be sold is subject—

To dower or any interests in the nature of dower,

To any annual or contingent incumbrance,

To any incumbrance under the terms of which the incumbrancer cannot be required to accept payment of the principal money for a term of years yet to come,

The Commissioners shall deal with such interests in one of the two following ways ; that is to say, they shall either make the sale subject to such dower, interests, or incumbrances, or they may, with the consent of the parties entitled to such dower, interest, or incumbrances, cause the same to be valued at a gross amount,

assigning thereto such priority as they think just.

35. Every sale of land in pursuance of this Act shall be made under the control and direction of the Commissioners by public sale or private contract, together or in parcels, at such time and place and generally in such manner as the Commissioners think fit ; and every conveyance of land so sold shall be made by the Commissioners under their seal, and shall be signed by the chief Commissioner, or such other Commissioner or Commissioners as the chief Commissioner may direct, and the execution by any other party of such conveyance shall be unnecessary ; and such conveyance shall express the interests and incumbrances (if any) subject to which the sale is made, and may be in such form as the Commissioners may by order from time to time direct, or as near thereto as circumstances permit.

36. No sale made by the Commissioners shall affect any of the following rights or payments ; Any right of common, right of way, or other easement ;

Any tithes or like ecclesiastical dues ;

Any Crown rents or other like sums payable at fixed periods to her Majesty or to the Government of the colony ;

Except in cases where the Commissioners undertake to commute such Crown rents or other like sums as aforesaid, which they shall be at liberty to do, with the sanction of the Legislature of such colony, in cases where they think it will be for the benefit of the parties interested in the produce of such sale, and if they do so they shall express in the conveyance that the land sold is discharged from such Crown rents or other sums, as the case may be.

37. The purchase-money on every sale shall be paid as the Commissioners may direct, either into the Bank of England, or into the commissariat chest of some colony named by them, and be carried to an account to be opened in the name of the Commissioners to the credit in each case of the land (describing the same by the name of the plantation or estate to which it belongs, or by any other name the Commissioners think fit) ; and upon proof being made to the satisfaction of the Commissioners, and in such manner as they may direct, of the moneys so having been paid in, the chief Commissioner, or such other Commissioner or Commissioners as the chief Commissioner directs, shall endorse a certificate on the conveyance of such payment ; and any purchaser who has paid any money into the Bank or into the commissariat chest as aforesaid, shall be discharged from all liability in respect of the application thereof, and such endorsement shall be evidence of such payment ; and in all cases her Majesty's Government shall guarantee the safety of all moneys paid in pursuance of this Act into the commissariat chest of any colony.

38. Every conveyance made by the Commissioners in pursuance of this Act shall vest in the purchaser of the land so sold, subject to such rights and uncommuted payments, if any, as are hereinbefore declared not to be affected by

any sale by the Commissioners, but discharged from all other interests, rights, claims, and incumbrances, except such as may in pursuance of the power hereinbefore given be expressed in the conveyance to be subsisting on such land, and no conveyance made by the Commissioners shall be set aside on the ground of their not having had jurisdiction over the subject-matter thereof.

39. The Commissioners shall have power to order the delivery to the purchaser, or as he directs, of all deeds and documents of title belonging or exclusively relating to the land sold, which are in the possession or power of any of the parties to their order, and, on the application of any purchaser, to issue an order for the delivery to him of the possession of the land sold, or of such part thereof as may not be in the occupation of any person subject to whose interest the sale was made.

[To be continued.]

### NOTICES OF NEW BOOKS.

*The New Practice of the High Court of Chancery relative to the conduct of Suits by Bill, Claim, or original Summons, and to Proceedings in the Judges' Chambers and Masters' Offices; including Forms of Costs and numerous other Forms, the Practice relating to Special Cases, the several Acts concerning Trustees and Charitable Trusts, and the Indemnity of Executors and Administrators, with the Orders and Decisions of the Court thereunder; and a copious Index.* By HENRY JARMAN. Second Edition. London: W. Maxwell. 1854. Pp. 786.

THE new Statutes relating to the jurisdiction and practice of the Court of Chancery, and the several orders for carrying the enactments of the Legislature into effect, have now been sufficiently often before the Court to receive numerous decisions on their construction and effect, and to justify the publication of a work bearing the title of "The New Practice of the Court of Chancery."

The success of Mr. Jarman's first edition has induced him to devote his attention to enlarging its scope and producing a volume which he considers will form a complete practice of the Court under the new system, wherein he conducts the practitioner through all the ordinary proceedings in a suit:—1st, as taken by a plaintiff; 2nd, as taken by a defendant, whether by bill, claim, or summons.

The first part of the volume comprises the proceedings *up to decree* or decretal order, viz.,—1. Proceedings for plaintiffs by *bill*. 2. Proceedings for defendants to

bill. 3. Proceedings for plaintiffs by *claim*.

4. Proceedings for defendants to claim. 5. Proceedings in suits by summons.

The second part treats of the proceedings *after decree*, or order having the effect of a decree, including the various proceedings in the Judges' Chambers; further directions and costs.

The third part relates to bills of discovery, interpleader, foreclosure, and redemption, review, perpetuating testimony, specific performance, partition, special case, issues at law, paupers, motions, petitions, affidavits, process of contempt, infants, distringas, service of process, changing solicitor, &c.

The Appendix contains the Trustee Acts, 1850 and 1852; the Trustee Relief Acts; the Charitable Trusts Act, with the several orders and decisions on these Statutes.

In order that our readers may judge of the merits of the work, and the method Mr. Jarman has adopted in placing his subjects before the practitioner, we shall select some passages from the section in which the new practice at the Judges' Chambers is set forth.

The Author commences this part of his work with *the first summons*.

"The first step in prosecuting an order in the Judges' Chambers, directing any account or inquiry, is to leave a copy of the order at the Chambers, the solicitor certifying it to be a true copy of the original as passed and entered (17 G. O., 16th October, 1852), and thereupon to take out a summons to proceed and serve it on all necessary parties (18th *ibid*). The Judges generally require that all papers brought into Chambers shall be copied on foolscap paper, bookwise, with a quarter margin, part of which is to be left for a guard margin, of not less than three quarters of an inch. The summons is prepared by the party taking it, and sealed by the Judge's clerk, and a second copy is required to be left at the Judges' Chambers (3rd *ibid*). According to the first of those orders, it may be similar to the following form (which is that now in use), with such variations as the circumstances of the case may require."

The form of the summons is then given, with the following practical directions:—

"At the time of taking out any summons, or making any appointment, as already observed, the short particulars, showing the date when issued or made, name of cause or matter, by what party, and shortly for what purpose the summons or appointment is obtained, and at what time returnable, are to be entered in 'The Summons and Appointment Book,' kept at the Chambers (21st G. O., 16th October, 1852).

"This entry is made by the Judge's clerk. A summons, not originating proceedings, but



being in prosecution of an order, and not being for any purpose mentioned in section 30 of the Act 15 & 16 Vict. c. 80, must be served two clear days before the return (5th G. O., 16th October, 1852), except by special leave, and at the time of service the original must be produced and shown. On the return of the first summons, the Judge is to be satisfied, by proper evidence, that all necessary parties have been served with notice of the order, and thereupon the Judge will give directions as to the manner in which each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, and the time within which each proceeding is to be taken; and a day or days is to be appointed for the further attendance of the parties, but such directions may afterwards be varied or added to as may be found necessary (18th *ibid.*). The proper evidence of service of notice is the record and writ clerk's certificate of a memorandum of such service being entered, and an affidavit showing that the parties so served are all who are entitled to notice. The service of the order on any party may, however, be dispensed with by the Judge, if on the hearing of the summons it appears it cannot be effected by reason of absence of the party, or for any other sufficient reason, or under similar circumstances he may direct substituted service, or notice by advertisement or otherwise in lieu of service. (19th *ibid.*). [See also *Balinhard v. Bullock*, 20 L. T. 189]. If the defendants or other parties served with the summons do not attend at the return, an affidavit of service will be required."

The proper forms of affidavit are next given; and the Author proceeds to state that—

"If the summons first taken out, or any other summons, is not disposed of upon the return, the parties are to attend from time to time, without further summons, at such time or times as may be appointed for the consideration or further consideration of the matter to which it relates (16th *ibid.*). The course of proceeding in Chambers is ordinarily to be the same as the course of proceeding in Court upon motions (23rd *ibid.*); and notice must be given to all parties concerned of a party's intention to read any affidavit in Chambers (24th *ibid.*). What length of notice is to be given does not appear. It will be borne in mind that all affidavits used in the Court must be divided into paragraphs, each paragraph being numbered consecutively, and confined, as nearly as may be, to a distinct portion of the subject (15 & 16 Vict. c. 85, s. 37). Parties attending any proceeding in Chambers, without the previous leave of the Judge, are not to be allowed any costs of such attendance unless by special order of the Court (55th *ibid.*); and the costs of counsel attending the Judge at Chambers are not in any case to be allowed, unless the Judge certifies it to be a proper case for counsel to attend (56th *ibid.*). The 28th section of the

Act 15 & 16 Vict. c. 80, requires that the Chamber business of the Judges shall be proceeded on by summons, and, as near as may be, according to the form now adopted by the Judges of the Superior Courts of Common Law when sitting at Chambers."

The next section relates to the orders of the Judge made in Chambers. The Author says :—

"When the Judge makes an order in Chambers, if he does not otherwise direct, it will be drawn up by one of his clerks; but when considered necessary, the Judge may direct any order to be drawn up by a registrar as orders made in open Court are drawn up, and for this purpose the registrars are, when required, to attend the Judges respectively at Chambers, as may be found most convenient for furthering the business of the Court, and as the Lord Chancellor, with the concurrence of the Chamber Judges or any two of them, shall from time to time by any General Order direct (15 & 16 Vict. c. 80, s. 14). By the 15th section of the Act orders made by the Judges in Chambers shall have the force and effect of orders of the Court of Chancery, and may be signed and enrolled as such; and by the 28th of the General Orders of 16th October, 1852, such orders are to be entered as and where orders made in open Court are entered. Orders appointing guardians and for maintenance and some others are drawn up by the registrars. So also are some orders made by the Judges' clerks. Of this class some are of the orders for the production of documents. Orders for time to plead, answer or demur, to enlarge publication and the like, are drawn up in Chambers. To enable the registrar to draw up an order, the chief clerk will, after the summons is disposed of, indorse upon his original summons a minute of the order made, which being taken to the registrar's office will be the registrar's warrant for drawing up the order. The original summons is filed by the registrar."

## LAW OF ATTORNEYS.

### ORDER FOR TAXATION WHERE RETAINER DISPUTED.—SUBMISSION TO PAY.

It appeared that in pursuance of a meeting of the inhabitants, a committee was appointed to carry into effect a resolution to apply for an Act of Parliament for the purpose of rating to the parochial rates the owners instead of the occupiers of small tenements in Saffron Walden, and that ten of such committee with others entered into an undertaking to pay the expenses of such application to the amount set against their respective names. Mr. John Clarke, one of the committee, signed for 5*l.*, and on the bill being lost, the solicitors in the matter brought an action against him for the

amount of their bill of costs, and he thereupon paid the 5*l.* into Court and denied his further liability. Mr. Clarke afterwards petitioned for the taxation of the bill of costs, stating the action against him and that he had a valid defence, except as to the 5*l.*, but without any submission to pay what might be found due on taxation. An order of course was granted for the taxation, but it contained no direction to the Master to certify the amount due from Mr. Clarke.

On a motion to discharge the order with costs, the Master of the Rolls said :—

"This was an application to discharge an order of course obtained by Clarke, for the taxation of a bill of costs. The order is in an unusual form, though not without precedent. It was obtained under these circumstances :—The solicitors brought an action against Clarke, for the amount of their bill of costs. Clarke contests his liability to pay anything, on the ground that he did not employ them as his solicitors, and also disputes the amount of the bill. If they proceed solely at law, though the question of retainer may be contested there, the question of amount can only be contested in a very unsatisfactory manner, that is, not by taxation before the proper officer, but in open Court, which is almost impossible, or by reference to some person to take an account of what is due. The defendant has obtained the order of course to enable him, in case he shall fail in his defence at law, to have the amount of the bill ascertained by taxation.

"It appears that Lord Langdale, in a case of *Re Bateman*, approved of the order in the form in which this has been asked. It was never contested that that was not a proper course of proceeding, and no application was made to discharge the order, but upon a suggestion of the Judge himself, it stood over until after the trial of the action. The matter was never mentioned again; perhaps some compromise was made; in fact, the point was never decided.

"Since that time these orders, though, of course, of rare occurrence, have been granted from time to time, but this is the first occasion upon which their validity has been contested. The whole question is one of jurisdiction in the Court to grant such an order. Upon this point I think it unnecessary to say much, because, though there may be some question upon the construction of the Act of Parliament, I am of opinion that the cases which have been decided at common law settle the question, that the Court has jurisdiction; and I entertain no doubt that I have power to make such an order as the Court thinks fit.

"It cannot, however, be contended, that this form of order is not open to very considerable objection and inconvenience. In the first place, the order made is for immediate taxation, and if one-sixth be taxed off, the costs will have to be paid by the solicitors. After this has been done, it may appear upon the trial of the action,

that there is no retainer at all, and all these expenses are unnecessarily incurred. It is said that this is a matter to which the solicitors ought to have attended, and that they ought not to have proceeded upon their bill of costs. But it is to be observed that there are a great many cases in which a solicitor is acting for a large body of persons, and it is difficult to say expressly, by whom the solicitor is retained, and it may be a fair question to bring before the Court.

"But this is not the only inconvenience; there is another of a more serious description. The Taxing Master, in determining the validity of certain items, may, and frequently does, have to determine the validity of the retainer by the client in giving directions to his solicitor to do those particular acts. There are certain charges which will not be allowed unless the client directed his solicitor to incur them. This may involve, and necessarily does so, the question of retainer with respect to those charges, and this may involve the same question as at law, and the Taxing Master may come to one conclusion, and the jury upon the trial to another; and, in fact, the conclusion of the Taxing Master may determine the costs of taxation.

"The result of all this is, that in my opinion the matter ought in every case to be brought specially under the attention of the Court, that the Court may be enabled to make such an order as the circumstances of the case may require, and by which means either the taxation may be postponed until the question of law is determined, or the whole question of retainer may be referred to the Taxing Master.

"In making the order I propose to do, I beg to state I cannot compel Clarke to take it, but what I desire is, to save the expense to both parties of compelling Clarke to make an application for a special order.

"If an application be made, I shall then make the order which I am about to pronounce; but if Clarke now refuses to take it, I shall simply discharge the order of course, but without costs, because there is sufficient authority in the office to induce the solicitors to apply for this order.

"I think the proper order for me to make is the same in substance as in *re Pyne*, that the client shall be at liberty to question the retainer of Messrs. Thurgood, and that they shall be restrained from commencing or prosecuting any action or suit touching their demand pending the reference, and that an undertaking shall be introduced into the order for Clarke to pay what, if anything, shall be found due upon such taxation. The result will be that I shall send the whole question to the Taxing Master, and if Clarke be not satisfied with my decision, the whole question will be brought before me.

"As I have already stated, I cannot compel Clarke to take the order, but if he do take it I shall direct the costs of the order to abide the result of taxation." In *re Thurgood*, 2 Eq. Rep. 1,162.

### LAW OF COSTS.

WHERE RULE NISI DROPS, ON JUDGES  
BEING EQUALLY DIVIDED.

UPON a rule nisi for the new trial of an action being obtained, the Court were equally divided in opinion, and the rule accordingly dropped.

Lord Campbell said,—“In the House of Lords, when the Lords are equally divided in opinion, the respondent is successful; for a decision in his favour is made on the principle *semper presumitur pro negante*. But when this Court is equally divided on a rule, there is no decision, and no successful party. \* \* \* As this is the case of a proceeding for setting aside a verdict on the ground of misdirection, the Judges being equally divided, and the rule dropping on that proceeding, there will be no costs on either side. We find an express decision of the full Court, in *Chilton v. London and Croydon Railway Company*, (Exch.) Trin. Term, 1848, and by that we mean to abide.” *Dansey v. Richardson*, 2 Com. Law Rep. 1467.

ON APPEAL FROM CERTIFICATE OF JUSTICES STOPPING UP HIGHWAY.

Held, that the 5 & 6 Wm. 4, c. 50, s. 90, which enacts that “the Court of Quarter Sessions is hereby authorised and required to award to the party giving or receiving notice of appeal such costs and expenses as shall be incurred in prosecuting or resisting such appeal, whether the same shall be tried or not, and such costs and expenses shall be paid by the surveyor or other party as aforesaid, at whose instance the notice for diverting and turning or stopping up the highway, either entirely or subject as aforesaid, shall have been given,” is imperative, and that the Court of Quarter Sessions has no discretion to disallow such costs in any particular case. *Regina v. Surveyors of Finchley*, 2 Com. Law Rep. 1593.

### ATTORNEY'S PRIVILEGE FROM ARREST.

A CASE recently came on before Mr. Baron Martin at Chambers, in which an attorney, arrested in a western county, claimed to be privileged, on the ground that having been previously retained by a client in a case requiring summary proceedings by a magistrate that he was privileged *eundo*, &c. The client, after previous consultation, had sent specially, a distance of 20 miles, requiring the attorney's

attendance on a certain day. The attorney went to the place appointed, believing it to be the usual magistrates' meeting-day in that town. He was arrested as he got down from the coach he travelled by.

Mr. Hope, on the part of the applicant, submitted that the case was the same in principle as many others that had been decided. The attorney was going before a magistrate to represent his client in a case in which a violent possession had been taken and retained of his client's house, and the intruder would not go out. The idea of waiting for two or three weeks (it might probably be) for an ordinary magistrates' meeting in a provincial town would be out of the question, and he argued that besides the ordinary power of magistrates (in questions of violent entry, &c.,) there was a peculiar power given to magistrates under a Statute of Richard to *summon a jury*, and if the jury should find that “force” had been used to get possession (no matter what was the colour of right between the parties), the magistrate had power to restore possession, even by force, and put the parties in their former position to try the question legally.

Mr. Pullen, who appeared for the execution creditor, was not called upon, for

The learned Baron held, that it was no privilege, and that the Judges were decided in not extending the cases of privilege to attorneys or counsel.

### AUDIENCE OF ATTORNEY IN THE SUPERIOR COURTS.

A MIDDLESEX magistrate gave possession to a landlord of premises as deserted on the day preceding the last day of Term. Under the 11 Geo. 2, c. 19, s. 16, there is a right of appeal “summarily” to the “Judges” of the Queen's Bench or Common Pleas (not Exchequer). Application having been made to Mr. Justice Cresswell at Chambers, he was clearly of opinion that the subject must go to the full Court.

Mr. Hope, the attorney for the tenant had scarcely time to get up the necessary affidavits, but a learned counsel who had previously advised on the case had promised to be in Court by four o'clock, or request a friend to make the motion.

Mr. Hope was in Court with his affidavits, but neither learned counsel was in Court, and two other counsel who were invited to hold the briefs, said they would not undertake to move so novel a rule without more time to consult the Acts of Parliament relied upon.

Under these circumstances, the attorney waited till the Court was about to rise, and

then mentioned to the learned Judges the position he was placed in, and pointed out that the delay of waiting till next Term to seek restitution might be as injurious to the landlord if he should relet, as the tenant who was expelled, and

The Lord Chief Justice allowed the motion to be made by Mr. Hope, as attorney for the tenant, and after reference by Mr. Justice Wigham to the Statute referred to, the rule was granted; and on the further suggestion of Mr. Hope to have the rule returnable at Chambers, Mr. Justice Erle said, the rule should be made returnable next Term, with an intimation that it might be taken at Chambers if the landlord consented. This rule was drawn up at the Crown Office, and we understand the matter has been amicably adjusted.

### WANT OF ROOM AND VENTILATION IN THE COURTS AT WESTMINSTER.

It may be useful to record the annoyance and inconvenience which the Court and jury, and all connected with the administration of Justice, experience in Westminster Hall, in order that when the question of new Courts and offices again comes before Parliament, the evils which prevail may not be forgotten.

On the trial of an action in the Court of Queen's Bench on the 6th instant, the jury were directed by Lord Chief Justice Campbell to retire for the purpose of considering their verdict, when the following appeal was made to the Court:—

The Foreman.—“I hope, my lord, if we are to retire, your lordship will direct us to be shown to a better room. The room we were in is up five flights of stairs.”

Lord Campbell.—“I am really very sorry, gentlemen; it is very disgraceful, but I have no better room for you.”

The Foreman.—“Up five flights of stairs, and some of us had great difficulty in getting up. There was somebody at the top of the stairs, with no candle in his hand, calling out to us, ‘Come along, come along.’”

“The jury then retired, and on their return, stated they considered the total loss to be 700*l.*, including 200*l.*, the value of some hard-wood alleged by the plaintiff to have been covered by the insurance which was denied by the defendants, and was to have depended on the construction which the Court put on the word ‘therein’ in the policy.

“It was then agreed by counsel to ‘split the difference,’ and a verdict was entered for the plaintiff—Damages 600*l.*

“The Court did not rise till a late hour.”

The reporter of the *Daily News* then remarks on the state of the Court as follows:—

“The complaints made by the jury who tried the above case of the room to which they retired were doubtless well founded, but it might be supposed that having sat in the Court itself for three days, they would have been glad to escape anywhere from so foul an atmosphere. Our Courts of Common Law are admittedly not only inconvenient, but totally inapplicable to the purposes to which the fantastic imagination of the architect designed them; and in no case has this been more fully exemplified than during the progress of the cause above reported. The thermometer was at a height which we are afraid to name lest the statement should appear fabulous; but this we may state, that several persons—women particularly—had to retire oppressed by the heat and stench. But inconvenient and ill-contrived as the Court is, we cannot but believe that much of the inconvenience might be remedied if the simple plan, found so efficacious in the city Courts, were adopted of keeping entrances for counsel, attorneys, witnesses, and others who are immediately concerned, apart from that by which the general public finds ingress. The discomfort which is endured by all is in a considerable degree experienced by those whose duty it is to report the proceedings of the Court, and who might not unreasonably hope to be permitted to do so without being subjected to the intrusion of persons who have no business in the box allotted to their use. To such an extent has this intrusion been carried on, that it is with the utmost difficulty that we have been enabled, in cases of public interest, to perform our duties, and during the above trial we were compelled to appeal to the officer of the Court, who courteously expressed his regret that it was not in his power to remedy the grievance. We must therefore hope that the matter will attract the attention of a higher authority.”

The Times of the 11th December observes, that—

“The state of the Court and the inconvenience of the arrangements for the accommodation of all persons having to frequent it have again and again, during the present sittings, been the subject of complaint.

“Lord Campbell expressed his concurrence in the complaints so made, and said it was necessary that something should be done, and he hoped that some of the evils complained of would be remedied without delay.”

### ADMIRALTY COURT FEES.

HER MAJESTY has been pleased, by and with the advice of her Privy Council, to order that from and after the 1st day of January, 1855, and until her Majesty shall be pleased otherwise to direct, the fees in the schedule annexed to such order, marked from No. 1 to No. 73 inclusive, shall be substituted in lieu of the fees now payable to the Judge, Registrar, Marshals, and Marshal of the High Court of

Admiralty of England, and which, under the provisions of the Act of the 3 & 4 Vict. c. 66, are now carried to the Fee Fund of the said Court.

And her Majesty was further pleased, by and with the advice of her Privy Council, to order that all the said fees numbered from No. 1 to No. 73, inclusive, shall, from the day aforesaid, be collected by means of *stamps*, whether adhesive or affixed and under such regulations as the Judge of the said Court shall direct.

And her Majesty was also pleased to order that the fees in the schedule annexed to such order marked from No. 74 to No. 76, inclusive,

shall, from the said 1st day of January, 1855, be payable to the *Seal Keeper* of the said Court, in lieu of the fees now payable to him in respect of that office.

And her Majesty was also pleased to order, that in lieu of the fees now payable to the *Crier* of the said Court, there shall, from the day aforesaid, be payable to him a uniform fee of 5s. on every interlocutory decree, sentence, or motion in Court, to be paid by the party in whose favour such decree or sentence has been given, or by whom such motion has been made.  
—From the *London Gazette* of 12th December, 1854.

## ATTORNEYS TO BE ADMITTED.

*Hilary Term, 1855.*

*Queen's Bench.*

[Concluded from page 112.]

| <i>Clerks' Names and Residences.</i>  | <i>To whom Articled, Assigned, &amp;c.</i>  |
|---|---|
| Morice, George, Aberystwyth . . . . .   | J. Hughes, Aberystwyth; F. R. Roberts, Aberystwyth                                  |
| Olivier, Alfred, 24, Osaburgb-street, Regent's-park; Everett-street; and Devizes . . . . .    | F. R. Ward, Bristol; A. J. Knapp, Bristol   |
| Pead, Robert Josiah, 28, Parliament-street . . . . .  | H. E. Brown, Sakers' Hall; R. H. Wyatt, Parliament-street                           |
| Plunkett, Henry, 30, Albert-terrace, Southwark; Walworth; and Stourbridge . . . . .           | H. Corser, Stourbridge  |
| Rashleigh, William Boys, Horton Kirby . . . . .   | J. E. Buller, Lincoln's-inn-fields  |
| Ravenor, Nathaniel Graham, 12, Montague-st., Russell-square; and Regent-street . . . . .      | G. G. Vincent, Staple-inn   |
| Richards, Thomas Francis, 41, Downham-road, Islington; and Witney . . . . .                   | F. Hunt, Witney; J. Flaker, Symond's-inn  |
| Rider, James, 1, Rider's-buildings, Chatham-st.; and Leeds . . . . .                          | F. Ferns, Leeds   |
| Seale, Ed. Wilmot, jun., Malmesbury-house, East Dulwich . . . . .                             | H. H. Poole, Bartholomew-close  |
| Selby, James Addison, 14, East-street, Lamb's-Conduit-street; and Chelsea . . . . .           | T. Selby, West Malling  |
| Serrell, George, 6, Mornington-road, Regent's-park  | G. Pyke, Lincoln's-inn-fields   |
| Shaw, Thomas William, 77, Charington-street, Camden-town; and Ghent . . . . .                 | S. Tripp, Argyle-street   |
| Smith, John Edward, Leeds . . . . .   | J. A. Ikin, Leeds   |
| Soames, Frederick, B.A., 33, North Audley-street  | J. Lawford, Drapers' Hall   |
| Stanway, Edward, 34, Myddleton-square . . . . .   | R. Ford, Crown-court; J. Galsworthy, Charlotte-row; R. T. Croft, Cophall-court      |
| Stone, Samuel Francis, 3, Compton-street, East, Brunswick-square; and Knighton . . . . .      | S. Stone, Leicester   |
| Stott, William, 17, Wilton-place, Regent's-park, West; and Manchester . . . . .               | W. Slater, Manchester; N. C. Milne, Temple  |
| Start William, Clapham-common . . . . .   | W. C. Sole, Aldermanbury  |
| Teson, Charles, jun., 23, New Ormond-street, Queen's-square; Old Jewry; and Beccles . . . . . | J. C. Webster, Beccles  |
| Tatlock, John, Chester . . . . .  | J. Hostage, Chester   |
| Thompson, T. Wathen, 3, Bedford-square . . . . .  | A. Howard, Angel-court  |
| Turnbull, Richard Carr, 25, Oxford-terrace, Chelsea   | H. Gregson, Lancaster   |
| Ward, Samuel Broomhead, 16, Pelham-place, Thurloe-square; Rock-ferry; and Merton . . . . .    | C. W. Squarey, Salisbury; A. T. Squarey, Liverpool; J. A. Radcliffe, Delahay-street |
| Welsh John Benn Kemp, 8, Store-st., Bedford-sq. . . . .                                       | M. K. Welch, Poole  |
| Whitaker, George, 16, Mount-street, Grosvenor-square; and Kingston-upon-Hull . . . . .        | J. Earnshaw, Kingston-upon-Hull   |
| Wood, Walter, 41, Bloomsbury-square . . . . .   | J. J. Blake, Blokkfriars-road   |
| Woodbridge, Thomas H. Riches, 37, Gloucester-street, Queen's-square; and Lewes . . . . .      | E. Blaker, Lewes; R. Gamlen, Gray's-inn   |
| Wright, William Walton, 1, Caroline-place, Milton-road . . . . .                              | E. H. Rickards, Lincoln's-inn-fields  |
| York, James Noel, Wharfedale-house, St. John's-wood-road . . . . .                            | C. Ford, Bloomsbury-square  |

NOTICES OF ADMISSION FOR HILARY TERM, 1855.

*To be added to the List pursuant to Judge's Orders.*

| <i>Clerks' Names and Residences.</i>  | <i>To whom Articled, Assigned, &amp;c.</i>                        |
|---|---|
| Dawson, Peter Henry, Longton, near Preston                                      | F. Deason, Preston  |
| Dixon, Ralph, 2, Bedford-street, Strand   | T. Brown, Newcastle-upon-Tyne; W. C. Bousfield, Gray's-inn-square |
| Freeman, Stonehewer Parker, 16, Norfolk-crescent, Hyde-park; and Coleman-street | T. H. Bothamley, Coleman-street                                   |
| Munby, John Forth, 24, University-street; and Clifton, near York                | J. Munby, York  |
| Parker, Francis, 6, Frederick's-place, Old Jewry; and Worcester                 | J. Parker, Worcester  |
| Sandys, Edwin, 9, Bedford-place, Russell-square                                 | J. T. Cookney, 5, Lamb's-Conduit-place                            |

*Notice of Application for Re-admission on the last day of Hilary Term, 1855.*

Kensit, Henry, 37, Inverness-terrace, Bayswater; and Hyde-park-gate, South.

SELECTIONS FROM CORRESPONDENCE.

CONFLICTING ENACTMENTS AS TO RECOVERING ARREARS OF RENT.

By the 3 & 4 Wm. 4, c. 27, s. 42, no arrears of rent shall be recovered by distress or suit, but within six years after the same shall become due.

By the 3 & 4 Wm. 4, c. 42, s. 3, all actions of debt for rent on an indenture of demise must be commenced within ten years after the end of that Session, or 20 years after the cause of action.

On these apparently conflicting enactments, it was held, in *Page v. Foley*, 2 Bing. N. C. 679, that, as to action for rent on an indenture of demise, the latter Act (having last received the Royal Assent) must prevail.

AMICUS.

NOTES OF THE WEEK.

LAW APPOINTMENTS.

Mr. Henry Veal, of Grimsby, has been appointed a Commissioner to administer Oaths in Admiralty in England.

Mr. John Atkinson has been appointed Clerk to the Burial Board of the town of Whitehaven.

Mr. W. Corbett, jun., has been elected Auditor for the Shropshire and Montgomery Poor Law Audit Districts, in the room of Mr. Fisher, deceased.

Mr. Henry Hough has been elected one of the Coroners for the county of Rutland, in the room of Mr. J. E. Jones, deceased.

EXCHEQUER OF PLEAS.

We are informed that the Sittings at *Nisi Prius* in Term in London will be abandoned during next Term, it having been found that the system is one which tends to impede the business in *Banco* more than it advances that at *Nisi Prius*.

SOLICITORS ELECTED AS MAYORS.

Northampton, Mr. William Dennis.

Kidderminster, Mr. Henry Saunders, sen.

Tynemouth, Mr. John W. Mayson, of North Shields.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Court of Chancery.

(Coram Lord Chancellor and Lords Justices.)

*In re Pennant and Craigwen Consolidated Lead Mining Company, ex parte Mayhew.* Dec. 4, 1854.

JOINT-STOCK COMPANY. — TRANSFEROR'S LIABILITY AS CONTRIBUTORY ON WINDING-UP ORDER.

Power was given, under the deed of settlement of a company, for a shareholder to transfer his shares upon giving notice in writing to the purser and by a prescribed form. S.

transferred by such form to the appellant, but no notice in writing was given to the purser, but the parties went to him with the transfer and he entered it: Held, confirming the decision of Vice-Chancellor Stuart, that the appellant's name was rightly on the list of contributories upon the company being wound up, although at the time of the transfer the company was in an embarrassed state.

THIS was an appeal from the decision of Vice-Chancellor Stuart, from which it appeared that the appellant's name had been placed by the Master on the list of contributories to

the above company, in respect of 65 shares which had been transferred to him from a Mr. Sudbury, a short time before the order for winding up the company was obtained and while their affairs were in an embarrassed state. It appeared that no written notice of the transfer was given to the pursuer pursuant to the 23rd rule of the company, but that both the parties went to the pursuer at the company's offices with the transfer, which was in the proper form, and he then transferred the shares from Mr. Sudbury's into the appellant's name. It also appeared that notices of the meetings and proceedings of the company were afterwards sent to Mr. Sudbury as well as to the appellant. The Vice-Chancellor having held that the appellant was a contributory, this appeal was presented.

*Malins and Cairns* in support; *Bacon and W. Hislop Clarke* for Mr. Sudbury; *Rosburgh* for the official manager.

The Court said, that there was no doubt whatever but that the appellant had taken the shares from Sudbury, and had placed himself, as far as the company was concerned, in his position. The case could not be distinguished from *Fenn's case*, 22 Law J., N. S., Ch., 692, which decided that a shareholder transferring his shares had absolved himself from all responsibility under the 24th section of the Winding-up Act, and the observations of Lord St. Leonards in the case of *Cape's Executor*, 2 De G., M'N. & G. 562, were in principle to the same effect. The deed of partnership provided that a partner should be at liberty to transfer his shares, and this must necessarily mean that the transferee was to be put in the place of the transferor, and this was confirmed by the language of the transfer which conveyed to the transferee everything possessed by the transferor in the company. But independently of this, the mere fact of a partner being empowered to transfer carried with it all the rights and liabilities of the transferring shareholder and substituted the other in his place. The appeal would therefore be dismissed.

#### Vice-Chancellor Kindersley.

*Price v. Hamlett.* Nov. 9, 1854.

**BILL OF REVIVOR. — ENTERING APPEARANCE FOR DEFENDANT NOT APPEARING IN THREE WEEKS.**

*An order was made under the 29th Order of May 8, 1845, for leave to the plaintiff to enter an appearance for a defendant, upon his not appearing within three weeks after being served with a copy bill of revivor, upon an affidavit of such service.*

THIS was a motion under the 29th Order of May 8, 1845,<sup>1</sup> for an order for leave to the

plaintiff to enter an appearance for a defendant upon his not appearing within three weeks after being served with a copy bill of revivor.

*Bromehead* in support.

The Vice-Chancellor said, that an order might be taken upon an affidavit of the service.

*Brian v. Twigg.* Nov. 9, 1854.

**DEATH OF COMMITTEE OF LUNATIC DEFENDANT AFTER DECREE, SUBSTITUTION OF NEW COMMITTEE.**

*An order was made on motion, substituting the name of the new committee of a lunatic defendant, upon the death of the former committee, also a defendant, after the decree.*

THIS was a motion for an order to substitute the name of the new committee of a lunatic defendant, upon the death of the former committee, also a defendant, after the decree.

*W. Hislop Clarke* in support, cited *Johanson v. Legard*, 2 Mad. Princ. & Pract. 523, and *Lyon v. Mercer*, 1 Sim. & S. 356.

The Vice-Chancellor accordingly made the order as asked.

#### Vice-Chancellor Stuart.

*In re Cabell.* Nov. 24, 1854.

**PAYMENT OF SMALL FUND IN COURT TO HUSBAND ON DEATH OF WIFE, WITHOUT ADMINISTERING.**

*An order was made on petition for payment to their respective husbands of two sums of 80l. and 50l. to which two married women were entitled and which had been paid into Court under the 10 & 11 Vict. c. 96, notwithstanding they had not taken out letters of administration.*

THIS was a petition for the payment out of Court of two sums of 80l. and 50l. odd, to

of the Court, duly served with "a copy bill "and refuses or neglects to appear thereto within eight days after such service, the plaintiff may, after the expiration of such eight days and within three weeks from the time of such service, apply to the record and writ clerk to enter an appearance for such defendant: and no appearance having been entered, the record and writ clerk is to enter such appearance accordingly, upon his being satisfied by affidavit that the "copy bill "was duly served upon such defendant personally or at his dwelling-house or usual place of abode; and after the expiration of such three weeks, or after the time allowed to such defendant for appearing has expired, in any case in which the record and writ clerk is not hereby required to enter such appearance, the plaintiff may apply to the Court for leave to enter such appearance for such defendant; and the Court, being satisfied that the "copy bill "was duly served, and that no appearance has been entered for such defendant, may, if it so thinks fit, order the same accordingly."

<sup>1</sup> Which provides, that "if any defendant, not appearing to be an infant or a person of weak or unsound mind, unable of himself to defend the suit, is, when within the jurisdiction

which two married women were entitled and which had been paid into Court under the 10 & 11 Vict. c. 96, upon their death, to their respective husbands the petitioners, notwithstanding they had not taken out letters of administration.

G. W. Collins in support.

The Vice-Chancellor made the order as asked, on the authority of *Wadbury v. Yorke*, Reg. lib. 1851.

**Fudge v. Pitt. Dec. 7, 1854.**

**DEATH OF SOLE PLAINTIFF AFTER VOLUNTARY ANSWER. — ORDER ON PERSONAL REPRESENTATIVES TO REVIVE.**

*In a suit seeking a declaration, that an infant defendant was trustee for the plaintiff in respect of certain stock purchased with her own moneys in their joint names, the defendant, by her guardian, put in a voluntary answer, and the plaintiff then died: An order was made on notice, under the 63rd Order of May 8, 1845, on her personal representatives to revive within 14 days, or for the bill to be dismissed.*

This was a motion, pursuant to notice, under the 63rd Order of May 8, 1845,<sup>1</sup> for an order on the legal personal representatives of the plaintiff in this suit to revive the same within 14 days, or that it be dismissed. It appeared that the suit was instituted to obtain a declaration that the defendant, an infant, was trustee for the plaintiff, who had purchased certain stock with her own money in their joint names, and that the defendant had appeared by her guardian and answered voluntarily, but that the plaintiff had died before any subsequent proceedings were taken.

G. W. Collins in support.

The Vice-Chancellor said, that the order would be made as asked.

**Vice-Chancellor Wood.**

**Read v. Prest. Nov. 8, 1854.**

**SUIT TO SET ASIDE SETTLEMENT AGAINST TRUSTEES. — CESTUIS QUE TRUSTENT. — PARTIES.**

*In a suit against the trustees to set aside a settlement on the ground of its having been obtained by fraud, held that the trustees do not sufficiently represent the cestuis que trustent under the 15 & 16 Vict. c. 86, s. 42, rule 9, and it was ordered to stand over in order to have them represented.*

In this suit to set aside a settlement on the ground of its having been obtained by fraud, it appeared that the trustees were defendants,

<sup>1</sup> Which provides, that "in cases where a suit abates by the death of a sole plaintiff, the Court, upon motion of any defendant made on notice served on the legal personal representative of the deceased plaintiff, may order that such representative do revive the suit within a limited time, or that the bill be dismissed."

but that none of the *cestuis que trustent* were made parties.

The Vice-Chancellor accordingly directed the case to stand over in order to add a party to represent the *cestuis que trustent*.

*Roll and Webb*, for the plaintiff, referred to the 15 & 16 Vict. c. 86, s. 42, rule 9.<sup>1</sup>

**Parkinson v. Chambers. Nov. 11, 1854.**

**DEATH OF PLAINTIFF IN REDEMPTION SUIT. — LEAVE TO ADMINISTRATOR AND NEXT OF KIN TO SUE IN FORMA PAUPERIS.**

*The plaintiff in a suit to redeem a mortgage died, and one of the next of kin administered: An order was made for leave to sue in forma pauperis, but a direction for the return of the 11. fee on the petition required to obtain the order was refused.*

UPON the death of the plaintiff in this suit, which was instituted for the redemption of a mortgage, the petitioner, who was one of the next of kin, took out letters of administration, and now presented this petition for leave to sue in *forma pauperis* upon the usual affidavit, &c.

E. Ward in support.

The Vice-Chancellor made the order as asked, but refused to direct the 11. stamp affixed to the present petition to be returned.

**Court of Queen's Bench.**

**Regina v. Justices of Walsall. Nov. 23, 1854.**

**PEREMPTORY MANDAMUS UNDER COMMON LAW PROCEDURE ACT, 1854, ON JUSTICES TO HEAR AND DETERMINE APPLICATION FOR LICENCE.**

*Notice of application for a licence was given under the 9 Geo. 4, c. 61, s. 10, but the justices, without hearing the application, resolved that no further applications for new licences would be entertained: A peremptory mandamus was awarded under the 17 & 18 Vict. c. 125, s. 76, for the justices to hear and determine the application.*

This was a motion under the 17 & 18 Vict. c. 125, s. 76,<sup>2</sup> for a rule absolute in the first

<sup>1</sup> Which enacts, that "in all suits concerning real or personal estate which is vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested under the trusts parties to the suit; but the Court may, upon consideration of the matter, on the hearing, if it shall so think fit, order such persons or any of them, to be made parties."

<sup>2</sup> Which enacts, that "upon application by motion for any writ of mandamus in the Court



instance for a mandamus on the defendants, to hear and determine on the application under the 9 Geo. 4, c. 61, of Joseph Whitehouse for a licence to sell excisable liquors. It appeared that notice of the application had been duly given under section 10, but that on the licensing day the defendants had come to a resolution not to entertain any more applications for new licences.

*Hodgson* in support of the rule, against which *Huddleston* showed cause in the first instance.

The Court said, that the justices must hear before they exercised their discretion, as there might be many things material to be known which did not appear on the notices, and a peremptory mandamus must therefore be awarded.

### Court of Exchequer.

*In re Alison.* Nov. 21, 1854.

WARRANT OF COMMITMENT BY JUSTICES UNDER 11 & 12 VICT. C. 43.—VERIFICATION OF CONVICTION.

*Upon an objection being taken to a warrant of commitment in the form given by the 11 & 12 Vict. c. 43, the formal conviction was not drawn up, and an application was afterwards made to the Court of Queen's Bench for a habeas corpus on the ground the warrant did not show the conviction took place at a place where the justices usually held petty sessions, but that Court held that a good conviction would be presumed, and refused a rule. On a rule being granted here, a good conviction was produced verified by affidavit: Held, that the verification by affidavit was sufficient without bringing it up by certiorari, and that as the justices had adopted the form in the 11 & 12 Vict. c. 43, the objection must be overruled.*

THIS was a rule nisi for a writ of *habeas corpus* to bring up the body of Joseph Alison, who had been convicted by two justices of an aggravated assault and sentenced to six months' imprisonment with hard labour. It appeared that the warrant of commitment was made out in the form given in the Schedule to the 11 & 12 Vict. c. 43, but that on an objection being taken on the ground that it did not show the prisoner was convicted at a place where the petty sessions were usually held, no formal conviction was drawn up. An application was then made to the Court of Queen's Bench for a writ of *habeas corpus* on the ground of the warrant not showing the justices had jurisdiction, but the rule was refused, the Court holding that a good conviction on which the warrant was framed would be presumed.

*Scotland* showed cause, and produced a good conviction verified by affidavit, but it appeared the conviction was not verified by the signature of the Commissioner administering the oath.

of Queen's Bench, the rule may in all cases be absolute in the first instance, if the Court shall think fit."

*Huddleston*, in support, objected to its admission, and contended it should have been brought up on certiorari.

The Court said that the verification by affidavit was sufficient, but, without deciding the other objection of the Commissioner not verifying the conviction, said, that the question was, whether the Court of Queen's Bench had laid down an erroneous proposition in presuming a good conviction, and whether the warrant was open to objection against its form. It was clear the justices had adopted the form under the 11 & 12 Vict., which was prescribed in order to extricate justices from these objections, and the rule would be discharged. It was, however, of course open to the defendant, if any defect existed in the conviction, to bring it up by certiorari to quash it.

*Rogers v. Hunt.* Nov. 25, 1854.

SPECIAL ENDORSEMENT OF EXPENSES OF NOTING IN ACTION ON BILL OF EXCHANGE, UNDER COMMON LAW PROCEDURE ACT, 1852.

*In an action on a bill of exchange, the plaintiff specially indorsed under the 15 & 16 Vict. c. 76, s. 25, for the balance of principal, interest, and expenses of noting due thereon. No appearance was entered until after the time for so doing had expired and earlier in the day than the plaintiff signed judgment: Held, discharging a rule nisi to rescind a Judge's order, setting aside the judgment, that the plaintiff could not specially indorse the expenses of noting, but must declare.*

IN this action on a bill of exchange, it appeared that the writ of summons was specially indorsed, under the 15 & 16 Vict. c. 76, s. 25,<sup>1</sup> for the balance of principal, interest, and expenses of noting due thereon. Judgment was signed in Nov. 4 last, but an appearance had been entered in an earlier part of the day, although the time for entering an appearance expired on the 25th October. An order had been made by *Martin, B.*, at Chambers, setting aside the judgment, and this rule nisi had thereupon been obtained to rescind such order.

*Dowdeswell* showed cause against the rule, which was supported by *Doyle*.

The Court said, that the plaintiff could not recover the expenses of noting the bill as a liquidated demand, but only the interest, and the indorsement was therefore a nullity, and he must declare. The rule would therefore be discharged.

<sup>1</sup> Which enacts, that "in all cases where the defendant resides within the jurisdiction of the Court, and the claim is for a debt or liquidated demand in money, with or without interest, arising upon a contract, express or implied, as for instance upon a bill of exchange," &c., "the plaintiff shall be at liberty to make upon the writ of summons and copy thereof a special indorsement of the particulars of his claim."

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

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—"Still attorneyed at your service."—Shakespeare.  
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SATURDAY, DECEMBER 23, 1854.

### HONOURS AND EMOLUMENTS OF THE PROFESSION.

#### COMPARATIVE STATE OF THE TWO BRANCHES.

It has been long assumed that the emoluments of the Legal Profession are very large, if not enormous, and fully proportioned to the services rendered by its members to the clients who employ them. It is a matter dependent, not on presumption, but experience, that according to the amount of the emoluments and honours of a Profession will be the competition to enter it; and it may not, therefore, be useless to notice the increasing number of the practitioners in both branches of the Profession during the progress of the various "Reforms" (as they are called) or alterations,—sometimes real amendments, but too often mischievous changes,—which have taken place within the last 24 years.

In the year 1830, the number of the members of the Bar was 1,194, being an increase of 30 per cent. during 10 years; and the number of Attorneys and Solicitors 7,508, being an increase of 16 per cent.

Since that time down to 1850 the population has increased 27 per cent., and estimating the amount of wealth by the increase of the number of inhabited houses, the increase of wealth was 30 per cent.

From the year 1830 to 1840 the Bar had increased 46 per cent., and from 1840 to 1850 no less than 86 per cent. In the latter year they numbered 3,400. The number of Attorneys and Solicitors increased from 1830 to 1840 at the rate of 32 per cent, but in the last 10 years less than one per cent. In fact, the number of certificated Attorneys was four less in 1853 than in 1843, when the annual registration

commenced. It appears by the Roll of Attorneys kept at the Registry of the Incorporated Law Society, and from the Stamp Office returns, that the stamped certificates issued between 15th November, 1843, and 15th November, 1844, were 9,900; and that from 15th November, 1852, to 15th November, 1853, the number was 9,896.<sup>1</sup>

There are two inferences to be drawn from these facts. 1st. That the attraction to the higher branch of the Profession has increased nearly twofold, whilst the inducement to join the second branch of the Profession has actually declined, more especially in reference to the increase of wealth and population, and consequently that the honours and emoluments of the Bar are believed by the Public to preponderate over the other branch, by little short of a hundred per cent.

2ndly. We may infer that the stationary or declining state of the Attorneys and Solicitors, in point of number, must be ascribed to the conviction by the community in general, that the emoluments of that department of the Profession are largely diminished, and consequently the sons of bankers, merchants, and manufacturers are placed in other more profitable vocations and employments.

It may be worthy of consideration, both by the public at large and by the government and judicial authorities, whether part of this result has not been injuriously produced by the practice in recent times of bestowing legal offices of honour on members of the Bar only, to the exclusion of Attorneys and

<sup>1</sup> In the Law List, Proctors, Notaries, and cetificated Conveyancers are included. In the above statement they are of course excluded.

Solicitors. It cannot indeed be doubted, that a very large number of persons become members of the Bar, in the hope and expectation that either by their personal merit, or by political influence, they will attain some of the numerous and splendid prizes which are held out for the encouragement (if not to promote the independence) of the youthful Barrister.

We trust, in these statements and remarks, it will be understood that we offer no opposition to the honours and emoluments of the Bar. On the contrary, we should rejoice to see them increased, and that more judicial offices should be created, adapted both to employ the learning and talent of the Bar, and to expedite the administration of justice for the good of the public. We think that men who have important judicial functions to perform, should not be over-worked; that five or six hours a day is amply sufficient to keep the mind upon the stretch; that there should be due intervals in the sittings of the Court, instead of a continuous daily labour of several months. We are persuaded that the rights and interests of the suitors would be promoted by not over-working the Judges, and inducing or tempting them to dispose hastily of the cases under their consideration. Delay, no doubt, should be avoided, and this should be effected by increasing the judicial staff. The saving of a few, or even many, thousands a year by over-burthening the Court, is "penny wise, but pound foolish."

On the other hand, we think that Attorneys and Solicitors should be invariably selected for official appointments, such as Solicitors to Government Boards, Commissionerships (with certain exceptions), Taxing Masters (for which office they are peculiarly competent), Registrars, Clerks of Records and Writs, Secretaries of Public Institutions where legal knowledge is required, and in fact all ministerial offices, if not some which are *quasi* judicial. If the business of the County Courts had been confined, as the Legislature evidently at first intended, according to the title of the Act, to the recovery of "*small debts*," not exceeding 20*l.*, Attorneys would have been fitter to discharge the duty than any one else, and many of them had the advantage of great experience as clerks or assessors in the various local Courts previously existing.

We feel confident that the interests of the public would be essentially promoted by holding out additional inducements to men of liberal education and great respectability to join the second branch of the

Profession, and qualify themselves for the discharge of its difficult, important, and responsible duties. These inducements should consist of honours as well as emoluments; and as the latter have largely decreased, the mode of remuneration should be revised and improved, and instead of diminishing the number of offices from which Solicitors are excluded and Barristers alone appointed, they should be increased and rendered worthy of the acceptance of men of family and social distinction.

The high prizes which are offered to the Bar, will always attract an ample number, not only of highly educated and talented men, but of the younger members of the aristocracy. Nearly a hundred of the Peerage have attained their eminent rank by their learning and eloquence at the Bar of our Superior Courts. We apprehend, that in promoting the interests of the higher grade of the Profession, the just rights of the second branch, and therewith the interests of the public, which are so closely connected with the integrity and ability of its practitioners, have been overlooked or insufficiently regarded. There is now an opportunity through the medium of the Royal Commission on the Inns of Court and Chancery, and of the investigation which must take place in Parliament when the Commissioners have made their report, to correct, in a considerable degree, the consequences of this neglect, and restore and amend the position and status of the Attorneys and Solicitors.

#### INCUMBERED ESTATES' (WEST INDIES) ACT.

17 & 18 VICT. c. 117.

[Concluded from p. 127, *ante*.]

It will be observed by the West India Incumbered Estates' Act, part of which was given in the last Number, that by the 6th section the Chief Commissioner must be a Barrister of not less than 10 years' standing and reside in England, having a salary of 2,000*l.* a-year. The Assistant Commissioners, whose salary will be 1,500*l.* each, need not be Barristers, but it is not provided that they shall be members of either branch of the Profession.

By the 9th section, power is given to the Commissioner to appoint a Chief Secretary and Assistant Secretary. These officers may be chosen, it appears, from either Barristers or Solicitors. The salaries of the Local Commissioners and Assistant Secretaries are to be paid by the Colonies.

The following is the remainder of the Act :—

*Sales by Commissioners, and Distribution of Purchase Moneys.*

40. Upon a sale of land under this Act an incumbrancer or other interested person (with the exception of the person upon whose application the sale was made), and with the leave of the Commissioners such last-mentioned person, may purchase such land or any part thereof; and if an incumbrancer becomes a purchaser he may, if the Commissioners think fit, retain out of the purchase-money such amount as would, in the judgment of the Commissioners, be eventually payable thereout to him in respect of his incumbrance, or any less sum on account of such amount, and pay the residue only into the bank or commissariat chest; and such retainer shall be without prejudice to the power of the Commissioners to require such purchaser to pay back into the bank or commissariat chest the whole or any part of the amount so retained by him, in the event of their afterwards determining that he is not entitled to retain the same.

41. The Commissioners shall apply the money arising from any sale made by them in satisfaction of the payments hereinafter mentioned according to the order following; that is to say,

Firstly, in paying to her Majesty or the government of the colony the consideration for the purchase of such Crown rents or other like sums, if any, as the Commissioners may have thought fit to commute in manner aforesaid;

Secondly, in paying all costs, charges, and expenses of and incidental to the sale, including the application for the same, or such of them as they think fit to allow:

Thirdly, in satisfying the incumbrances affecting such land according to their priorities:

And lastly, in paying the surplus to the parties who were previously to the sale entitled to such land as owners if such parties had an absolute interest therein, but if had not an absolute interest, then the Commissioners shall lay out the same in manner hereinafter mentioned:

And for the purposes of this Act the Commissioners shall have power, having due regard to the laws and customs of each colony, to declare the rights and priorities of all parties interested in such land, whether as owners, incumbrancers, or otherwise howsoever.

42. In cases where the parties who were previously to the sale entitled to such land as owners had not an absolute interest, such surplus as aforesaid of the purchase-money shall be settled to the same uses, upon the same trusts, and in the same manner to and in which the land sold stood settled, or such of them as may be capable of taking effect; and until such money is so laid out it may be paid to trustees to be appointed or approved by the Commissioners, for the purpose of being so laid out as aforesaid, with such power for the

investment thereof in government or colonial stocks, funds, or securities in the meantime, and such directions for the payment of the income of such investment in the manner in which the rents of the land to be purchased would be applicable, as the Commissioners think fit.

43. In cases where the Commissioners appoint or direct the appointment of trustees for any of the purposes of this Act, it shall be lawful for the Commissioners to make or to direct to be made such provision as they think fit for the appointment of new trustees, on any event to be determined by the Commissioners.

44. In cases where a part only of land subject to any incumbrance is sold, the Commissioners may charge the part not sold with such incumbrance, or an apportioned part thereof, in exoneration of the money arising from the sale, and to enable persons to release the money arising from the part so sold from any incumbrance, or to relinquish their claim on such money in respect thereof, without impairing such incumbrance as to the remaining part of the land originally charged.

45. In cases where it appears to the Commissioners unjust or inexpedient that a valuation should be made of such interests and incumbrances as they are hereinbefore authorised to cause to be valued at a gross sum, it shall be lawful for them to set aside and invest any portion of the money arising from any sale in such manner as they think fit to meet the claims of any such interested persons or incumbrancers, and generally the Commissioners shall have power to make all such orders and give such directions with respect to the application of the money arising from any sale as they think best adapted to secure the just and convenient distribution thereof amongst all interested parties, according to their several rights and titles.

46. No payment under this Act towards the discharge of any incumbrance, not being a payment in full, shall prejudice or affect any right or remedy of the incumbrancer in respect of the balance, otherwise than as against the land sold; and no payment under this Act in respect of any incumbrance shall impair any right or equity of any persons out of whose land such payment is made to be reimbursed or indemnified by any other person or out of any other land, except so far as the Commissioners order under any special circumstances.

47. The Commissioners may order any purchase-money standing to their account to be invested in their name in such government or colonial stocks, funds, and securities as they think fit, with power to vary the same into or for others of a like nature; and until such stocks, funds, and securities are sold by order of the Commissioners for the purposes of this Act, the dividends thereof shall from time to time be applied, under the order of the Commissioners, in like manner as the rents of the land from the sale of which the money invested

in such stocks, funds, or securities has arisen would have been applicable.

48. In cases where any money arising from a sale under this Act is not immediately distributable, or the parties entitled thereto cannot be ascertained, or where from any other cause the Commissioners think it expedient for the protection of the rights and interests therein, the Commissioners may order such money, or any stocks, funds, or securities in which the same may be invested, to be transferred to the account of the Accountant-General of the High Court of Chancery in England, in the matter of the parties interested in the same, to be described in such manner as the Commissioners direct, in trust to attend the orders of such Court, or to be transferred to the account of such officer in any colony, and be subject to the jurisdiction of such Court as the Commissioners direct; and the Commissioners may by their order declare the trusts affecting such money, stocks, funds, or securities, so far as they have ascertained the same, or state (for the information of any such Court as aforesaid) the facts or matters found by them in relation to the rights and interests therein; and the said Court of Chancery and any such colonial Court as aforesaid may make such orders with respect to any such moneys, stocks, funds, or securities as aforesaid, or the application thereof, as the circumstances of the case require.

49. The Commissioners shall have the following additional powers in respect of sales of land; that is to say,

Where separate applications are made for sales under this Act of different undivided shares of any land,

A power, with the consent of the applicants, and such other consents as the Commissioners think fit to require, to include in one sale all such undivided shares;

Where separate applications are made for sales under this Act of different lands, but such lands are intermixed, or otherwise adapted to be sold together,

A power, with such consent or consents as aforesaid, to include in one sale such different lands;

Where an application is made to the Commissioners for the sale of any undivided share in lands, and the owner of any other undivided share or shares, whether incumbered or not, in the same land, is desirous of having the same sold at the same time,

A power, with such consent or consents as aforesaid, to include in one sale all such shares as aforesaid;

And all the provisions of this Act applicable to any land subject to any incumbrance, and ordered to be sold under this Act, and to the purchase-money arising from the sale thereof, and to the conveyance thereof, shall, so far as circumstances admit, be applicable to any land or share in land to be so included in the sale; and in every such case as aforesaid the Commissioners shall apportion the purchase-money and expenses as they see fit.

50. A married woman for the time being

entitled to receive the income of land for her separate use, or having a power of disposing of land, either during her lifetime or by will, shall, for the purposes of this Act, be deemed a *feme sole*; but in other cases, where any person who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceeding under this Act, is a minor, idiot, lunatic, or married woman, the guardian, curator, tutor, committee of the estate, or husband respectively of such person, or if there is none any person appointed by the Commissioners, may make such applications, give such consents, do such acts, and be party to such proceedings as such persons respectively, if free from disability, might have made, given, done, or been party to, and shall otherwise represent such persons for the purposes of this Act.

51. Proceedings under this Act shall not abate or be suspended by any death, or transmission or change of interest, but in any such case of death or transmission or change of interest it shall be lawful for the Commissioners, where they see fit, to require notices to be given to persons becoming interested, or to make any order for discontinuing, suspending, or carrying on the proceedings, or otherwise in relation thereto, which to them appears just.

52. In every proceeding under this Act the Commissioners shall have full discretion as to the giving or withholding costs and expenses, and as to the persons by whom and the funds out of which the same are in the first instance or ultimately to be paid and borne; but, unless the Commissioners otherwise direct, the costs of the petitioner in respect of any petition for sale presented under this Act, and of the proceedings thereunder, shall not be payable out of the proceeds of the sale, otherwise than in the same order of priority in which the incumbrance of the petitioner is payable.

53. In cases where a competent Court has in the course of any proceedings made an order directing any land to be sold, the Commissioners may sell the same, without further inquiry; but in that event, and also in any case where any competent Court has made an oath in any proceeding with respect to any land, or the right of any person interested therein, the Commissioners shall, on selling such land, and in distributing the moneys arising from such sale, have regard to the orders made by such Court, and to any inquiries or proof made and taken in the course of such proceedings, with power, nevertheless, for the Commissioners, whenever it appears to them that there is any error in such order, or any defect in any such inquiries or proofs, to direct such person as they think fit to apply to the Court in relation thereto, and such Court may make such order concerning the matter of such application as it thinks fit; and the Commissioners may, out of any moneys arising from any sale under this Act, where there have been any such proceedings as aforesaid, provide for the costs of such application, and may, if they think fit, order all

or any part of the purchase-money, after payment thereof of such costs and expenses as may be payable under the orders of the Commissioners, to be paid into the Court in which any such proceedings have been instituted.

54. Where the Commissioners order the sale of any land in respect of which any decree for sale has been already made by a competent Court, or any proceedings are pending, they shall, by certificate under their seal, notify to such Court the order so made by them, and all proceedings for or in relation to a sale under the decree of such Court shall be suspended; and upon the completion of the sale under such order of the Commissioners any receiver appointed by such Court shall cease to act as such receiver with respect to the land or part thereof sold; and pending any proceedings for a sale under this Act it shall not be lawful for any owner, incumbrancer, or other person interested in such land to commence any proceeding at Law or in Equity for redemption, foreclosure, or sale.

*Powers of Commissioners as to Partition, Exchange, Division, and Allotment.*

55. Where an application is made for a sale under this Act of an undivided share of any land, or where any such undivided share has been sold under this Act, and either before or after the conveyance thereof, the Commissioners, on the application of any party interested in such undivided share, or of the purchaser (as the case may be), and after causing to be given such notices to the owner or owners of the other undivided share or shares of the same land as they think fit, and hearing all such parties interested in the respective shares as may apply to them, and making such inquiries as may enable them to make a just partition, may, if they think fit, make an order for the partition of such land; and in such order, or in a map or plan annexed thereto, shall be shown the part allotted in severalty in respect of each of the undivided shares in such land; and the part so allotted in severalty in respect of each such undivided share, shall without any conveyance or other assurance, enure to the same uses and trusts, and be subject to the same conditions, charges, and incumbrances, as the undivided share in respect of which the same is so allotted would have enured or been subject to in case such order had not been made.

56. Where an application is made for a sale under this Act of any land, or where the same has been sold under this Act, if, either before or after the conveyance thereof, application is made to the Commissioners by any party interested in such land, or by the purchaser (as the case may be), for the exchange of all or any part of such land, the Commissioners may make such inquiries as they think fit for the purpose of ascertaining whether such exchange would be beneficial to the persons interested in the respective lands, and cause such notices to be given to parties interested in the respective lands, as they may think fit; and if, after mak-

ing such inquiries, and hearing all such parties interested in the respective lands as may apply to them, the Commissioners are of opinion that such exchange would be beneficial, and that the terms therefore are just and reasonable, they may make an order for such exchange accordingly; and in such order for exchange, or in a map or plan annexed thereto, shall be shown the lands given and taken in exchange respectively under such order; and the land taken upon such exchange under such order shall, without any conveyance or other assurance, enure to the same uses and trusts, and be subject to the same conditions, charges, and incumbrances, as the land given on such exchange would have enured or been subject to in case such order had not been made.

57. It shall be lawful for the Commissioners, in any colony within which this Act may take effect, upon the application of the owners of any undivided shares (not subject to be sold under this Act, or as to which no proceedings for a sale under this Act are pending), to make such inquiries as the Commissioners think fit for ascertaining whether a partition would be beneficial to the persons interested in such respective shares; and in case the Commissioners are of opinion that the proposed partition would be beneficial, and that the terms thereof are just and reasonable, they shall make an order under their seal for such partition accordingly; and in such order, or in a map or plan annexed thereto, shall be shown the part allotted in severalty in respect of each such undivided share; and the part so allotted in severalty in respect of each such undivided share by such order of partition shall, without any conveyance or other assurance, enure to the same uses, and be subject to the same conditions, charges, and incumbrances, as the undivided share in respect of which the same is so allotted would have enured or been subject to in case such order had not been made.

58. It shall be lawful for the Commissioners, in any colony within which this Act may take effect, upon the application of the owners of lands in any of the said colonies not subject to be sold under this Act, or as to which no proceedings for a sale under this Act are pending, to make or cause to be made such inquiries as the Commissioners may think fit for ascertaining whether an exchange would be beneficial to the persons interested in the respective lands; and in case the Commissioners are of opinion that the proposed exchange would be beneficial, and that the terms thereof are just and reasonable, they shall make an order under their seal for such exchange accordingly; and in such order for exchange, or in a map or plan annexed thereto, shall be shown the lands give and taken in exchange respectively under such order; and the land taken upon such exchange under such order shall, without any conveyance or other assurance, enure to the same uses and trusts, and be subject to the same conditions, charges, and incumbrances, as the land given upon such ex-

change would have enured or been subject to in case such order had not been made.

59. It shall be lawful for the Commissioners, in any colony within which this Act may take effect, upon the application of any number of persons who are separately owners of parcels of land not subject to be sold under this Act, or as to which no proceedings for a sale under this Act are pending, and which are so intermixed, or divided into parcels of inconvenient form or quantity, that the same cannot be cultivated or occupied to the best advantage, to make such inquiries as the Commissioners think fit for ascertaining whether a division would be beneficial to the persons interested in such lands; and in case the Commissioners are of opinion that a division would be beneficial, they shall make an order for the division thereof accordingly, with a map or plan thereunto annexed, in which shall be specified as well the parcels in which the several persons on whose application such order has been made were respectively interested before such division as the several parcels allotted to them respectively by such order; and the parcels of land taken under such division shall enure to the same uses and trusts, and be subject to the same conditions, charges, and incumbrances, as the several lands which the persons taking the same have relinquished on such division would have enured or been subject to in case such order had not been made.

60. In the case of land in respect of which no proceedings for a sale under this Act may be pending, no such order for partition, exchange, or division as aforesaid shall be made by the Commissioners until such notices by advertisement in such public newspaper or newspapers as the Commissioners direct have been given of such proposed partition, exchange, or division, and three months have elapsed from the publication of the last of such advertisements; and if before the expiration of such three months any person entitled to any estate in or any incumbrance upon any land included in such proposed partition, exchange, or division gives notice in writing to the Commissioners of his dissent from such proposed partition, exchange, division, the Commissioners shall not make an order for the same unless such dissent is withdrawn, or it is shown to the Commissioners that the estate or incumbrance of the party so dissenting has ceased, or that such estate or incumbrance is not an estate or incumbrance in respect of which he is legally entitled to prevent such partition, exchange, or division; but no such order as aforesaid shall be in anywise liable to be impeached by reason of any infirmity of estate or defect of title of the persons on whose application the same has been made.

#### *Conveyances and Proceedings of Commissioners.*

61. Every conveyance executed as required by this Act, and every order for partition, exchange, or division made by the Commissioners under their seal, shall for all purposes

be conclusive evidence that every application, proceeding, consent, and act whatsoever which ought to have been made, given, and done previously to the execution of such conveyance, or the making of such order respectively, has been made, given, and done by the persons authorised to make, give and do the same; and no such conveyance or order shall be impeached by reason of any informality therein.

62. The Commissioners shall not be subject to be restrained in the execution of their powers under this Act, nor shall any person be restrained from making application under this Act to the Commissioners, or doing any other Act or giving any consent under the provisions of this Act, by order of any Court of Justice, or by any other legal process, nor shall the Commissioners be required by writ of mandamus, or any writ of a like nature, to do any act or take any proceeding under this Act, nor shall proceedings before them be removable by certiorari or other writ of a like nature.

63. The Commissioners shall not, nor shall any person acting under their authority, be liable to any action, suit, or proceeding for or in respect of any act or matter *bonâ fide* done or omitted in the exercise or supposed exercise of the powers of this Act.

64. Every person who, upon examination before the Commissioners or any of them, or any person appointed and authorised under this Act by the Commissioners to administer any oath, affirmation, or declaration, shall wilfully give false evidence, and every person who shall wilfully swear, affirm, or declare falsely in any affidavit authorised under this Act to be received in evidence by the Commissioners, shall be liable to the pains and penalties of perjury.

#### *Appeal.*

65. The Commissioners may review, rescind, or vary any order previously made by them; and it shall be lawful for any person aggrieved by any order of the Commissioners, with their sanction, but not otherwise, to appeal to her Majesty in Council, in such manner, within such time, and subject to such rules, regulations, and limitations as her Majesty may by order in Council prescribe; and the Commissioners may, in their discretion, give or refuse such sanction, and annex thereto such conditions, as to giving security or otherwise, as they shall think fit; but in all cases where the Commissioners refuse their sanction to any appeal their decision shall be final.

#### *Power to alter Provisions of Act.*

66. Wherever it appears to the Commissioners that by reason of the prevalence in any colony of laws and customs differing from those of England, or that by reason of any other matter or thing whatsoever, it is expedient, with the view of carrying into execution the purposes of this Act, That there should be substituted for the provisions of this Act or any of them other like provisions accommodated to the laws or customs of such colony; or

That further provisions should be made for carrying into execution in such colony, the orders of the Commissioners; for reconciling any conflict between the laws of England and such colony; for declaring the law with respect to any matter or thing; or otherwise for more effectually bringing this Act into operation within any colony, or carrying into effect the purposes thereof;

It shall be lawful for the Commissioners having due regard to the interests of owners, incumbrancers, and others, and to the laws and customs of the colony, by order under their seal to make any such substitutions or provisions as aforesaid, subject to the restrictions following; namely, that such substitutions or provisions shall not be repugnant to the spirit of this Act or to the general law of England, and shall not affect the constitution of the Commissioners as established by this Act; but no such order shall be of any force till the same has been confirmed by order of her Majesty in Council in manner hereinafter-mentioned.

67. Before any such order shall be capable of confirmation, it shall for the space of 30 days be submitted to the Legislature of the colony within which the same is intended to operate; and if such Legislature, within such period as aforesaid, express by resolution their disapproval thereof, such order shall thereupon be void to all intents; but if the Legislature, within the said period, express by resolution their approval thereof, or come to no resolution in respect thereof, the same shall thereupon be presented to her Majesty for confirmation, and, if so confirmed, shall, as soon as conveniently may be, be proclaimed in the colony, and upon such proclamation being made shall have the same force within such colony as if the same had been enacted by authority of Parliament.

68. Any order so confirmed as aforesaid may from time to time be rescinded, amended, or altered, as occasion may require, by other orders, to be made by the Commissioners, and to be submitted to the Legislature of the colony, and confirmed in like manner.

69. Her Majesty may from time to time, by order in Council, direct this Act to come into operation in any of the said scheduled colonies, and thereupon, but not otherwise, the same shall have the force of law in such colony or colonies named in any such order; but no such order in council shall be made in respect of any colony until the Legislature of such colony has presented an address to her Majesty, praying her Majesty to issue such order, and has also, to the satisfaction of her Majesty's principal Secretary of State for the Colonies, made provision for the payment of the salaries of the local Commissioners, and of all such assistant secretaries, clerks, messengers, and officers as may be appointed under this Act in such colony, and of such other expenses of carrying this Act into execution as are hereinbefore directed to be provided for by the Legislature of the colony.

SCHEDULE.

|              |                     |
|--------------|---------------------|
| Jamaica.     | St. Christopher.    |
| Barbadoes.   | Montserrat.         |
| St. Vincent. | Nevis.              |
| Grenada.     | The Virgin Islands. |
| Tobago.      | British Guinea.     |
| St. Lucia.   | Trinidad.           |
| Antigua.     | The Bahamas.        |
| Dominica.    | The Turks Islands.  |

LIMITED LIABILITY PARTNERSHIPS.

At a General Meeting of the Law Amendment Society, Nov. 6, 1854, the following paper was read by *Andrew Edgar, Esq.*, Barrister-at-Law, and referred to the Committee on Commercial Laws, with a request to take the subject into immediate consideration.

"The recent resolution of the House of Commons on the subject of partnership with limited liability, and the prevailing opinion of the public on the question, render it certain that considerable changes will shortly be introduced into the existing law. It is not to be denied, however, that amongst the mercantile community there exists a formidable, though by no means general, opposition to any extensive change in the present law; while amongst those persons who are favourable to the principle of limited liability, there is some difference of opinion, both as to the extent to which it should be admitted, and as to the best mode of carrying it out and insuring it against abuse.

"Although this Society, therefore, has already inquired into the question, it seems wise and expedient to recur to the subject at the present time. From the recent establishment of various sectional committees, the opportunity is now afforded of considering the matter in all its different bearings and ramifications, and of thus arriving at results which may aid materially in the final settlement of the question. The subject may be referred generally to the different committees, each of which will consider that section of the question which comes within its own province, or it may be referred specially to the Committee on Commercial Laws, which will receive assistance from the other committees on the different points which fall under the cognizance of each respectively.

"The views of those who are in favour of the introduction of the principle of limited liability into our law, rest on the clear and intelligible proposition, that it is not expedient 'to prohibit by law, persons from entering into partnership, and to prohibit them and others from dealing together, on the terms that the liability of one, or more, or all of the partners should be limited.'<sup>1</sup> This proposition, inde-

<sup>1</sup> See First Report of Commissioners on Mercantile Laws. Opinion of Mr. Bramwell, p. 23," published in the *Legal Observer* of 15th July, 1854.



pendently of the authority which it derives from the rules of enlightened jurisprudence, is supported by unquestionable evidence of the evils and hardships produced by the present law in this country, and of the advantages flowing from a different system in other countries.

"But strong as the case is in favour of a change in the law of partnership, there are various objections still urged against it in certain quarters. Those objections would not, at the present stage of the question, be entitled to much consideration, did they not proceed from men of great mercantile experience, and whose interests may be regarded as involved in the matter. Even admitting that there was some force in the objections referred to, they would only illustrate what Archbishop Whately calls the '*Fallacy of objections*;' i. e., showing that there are objections against some plan, theory, or system, and thence inferring that it should be rejected when that which ought to have been proved is, that there are *more or stronger* objections against the receiving than the rejecting of it."

"It is necessary, however, in such a question as the present, for the reason already stated, that the objections to which I have alluded should be carefully examined; and for this purpose I am anxious, on the present occasion, to call attention to the Report of a Committee of this Society in 1849, to whom it had been referred to consider the law of partnership with reference to the liability of partners. The opinion of a majority of that Committee was in favour of allowing the formation of partnerships in which the responsibility of certain of the partners should be limited to the amount of capital advanced by them, under proper restrictions for the prevention of fraud. The minority came to an opposite conclusion, and stated, in a separate paper, their reasons against the recommendation contained in the Report of the Committee. As I fully concur in the resolutions of the Committee as far as they go, and as the paper of the minority appears to me to embody the leading objections which can be urged against the system of limited liability, and are substantially the same as those brought forward by the majority of the Mercantile Law Commissioners in their first report, I do not think I can better re-introduce the subject to the consideration of the society than by examining some of the principal points of objection in the paper to which I have referred. These, I may observe, are entirely directed against the principle recommended in the report; and are chiefly founded on prudential and economical grounds. There is one objection, however, of a legal nature which calls for observation. The second reason stated is, 'Because it is as inconsistent with the principle of English Law as with justice that the risks and losses incidental to commercial speculation should not be borne by those who originate them, and who alone are to receive the profits if any arise.' Now, although, according to modern decisions, the law makes no distinc-

tion between active and dormant partners as long as the latter remain in the firm, I am at a loss to understand how there is anything opposed to the original principles of our jurisprudence in limiting the liability of the latter under certain circumstances. I do not allude to joint-stock companies incorporated by Act of Parliament or by Royal Charter, which partake rather of the nature of *privilegia* in the Roman Law; although, if the doctrine contended for be right, and its violation be as inconsistent with the principle of English Law as of justice, to allow the Board of Trade to grant charters authorising limited liability must be as impolitic and unjust as, in the language of Mr. Lowe, to allow 'the Secretary of the Treasury to grant dispensations for smuggling, or the Attorney-General licences to commit murder.' But the general principle of our law is that notice, or express stipulation, will limit the liability of partners as well as of other contracting parties. In some cases, where the business of a partnership is conducted by means of written documents, this is possible, and is commonly done in the case of life, fire, and marine insurance. This method, however, is of extremely limited application; and in the ordinary departments of trade, it is practically impossible to adopt such a course. But if the names of all the dormant members of a partnership whose liability was limited, and the amount of capital agreed to be advanced by such limited partners, were registered and duly published, and the style of the firm should indicate its character, so as to make notice a reasonable presumption, and at all events throw the duty of inquiring on the party contracting with the partnership, I can scarcely think that this would be inconsistent with the real principles of English Law, far less with any principle of justice of which I am aware. The same observation would apply to associations and companies where the liability of every member was limited; and in this case, indeed, it would only be allowing parties to do for themselves what the Crown or the Legislature can now do for them.

"With regard to reckless and fraudulent trading, which it is objected would result from partnerships with limited liability, I cannot think that *that* which now exists is likely to be very much increased by the proposed change. Of course it would be necessary that the most stringent provisions should be adopted against fraud. One thing is clear that the present state of the law has a tendency to prevent honourable and intelligent persons from having anything to do with joint-stock companies, and to leave their formation to the more speculative part of the community. Nor does it seem at all doubtful that there would be less room, under a system of limited liability, for the indolence, the carelessness, the positive dishonesty with which parties are too apt to enter into contracts with companies when they know that every individual member is liable to his uttermost farthing. Mere bubble schemes, however high and respectable the names which they might put forth, would have small chance of success,

when the furthest extent of their resources would be easily known, and when the indefiniteliability, which now gives such schemes all their factitious credit and importance, was withdrawn. Independently of this, with regard to such periods of excitement and panic as those of 1824-5, 1836, 1841, 1845, 1846, and 1847, I believe that the present law of partnership had no inconsiderable effect in giving rise to the perturbations which then took place. Unless there had been an immense amount of capital in the country which was not profitably employed, the opportunity would not have been afforded for the schemes which caused the panic and excitement in those periods; and the best preventive of their recurrence seems to be to afford convenient means for the profitable investment of capital by a system of limited liability, which by equalising the pressure will render it wholesome and beneficial.

"But the great objection stated by the minority of the Committee, and which still forms the leading ground of opposition against limited liability is, that although such a system may suit a country where capital is scarce, it is inapplicable to, and would be dangerous in, this country, where there is no want of capital to carry out any enterprise the prospects of which are capable of reasonable demonstration. Now this objection, I venture to think, is altogether fallacious. There is a large class of the community active and enterprising, but with whom capital is scarce, on whom the system would operate as beneficially as it does in those countries generally which are limited in point of capital; and it is impossible to overlook the case of such, notwithstanding the general wealth of this country and the abundance of resources that may be at hand for carrying out every reasonable enterprise. But with regard to capital never being wanting to carry out any reasonable enterprise, this is a view from which I beg totally to dissent. If we confine our attention to trade and manufactures as carried on in the great commercial districts of the country, there may be some appearance of truth in the proposition. But the moment we extend our view over the whole country, and take into account the agricultural, as well as the trading and manufacturing interests, we shall find that there is a great want of capital, and that this want operates in the most unfavourable manner. Not only are there many small towns advantageously situated for manufactures and trade which *vegetate* from generation to generation, not only are many works of public utility, and which might be ultimately profitable to their promoters, left unattempted throughout the country, but a large proportion of land capable of being profitably cultivated remains unimproved, while a very considerable proportion of that which is under cultivation yields only half returns, in consequence of the want of capital on the part of landholders and farmers. And the evil is daily becoming more felt in this latter case, since the present state of agricultural science has suggested many improvements which it requires considerable ca-

pital advantageously to introduce. If any one is of opinion that the resources of this country have been fully developed, or that the capital we possess is sufficient, under the present law of partnership, to carry them to their utmost limits, he will of course reject my argument; but believing as I do, that much remains to be accomplished, both in trade and agriculture, and that whatever capital is in existence should be made available for this purpose to its fullest extent, I can admit of no distinction between this and poorer countries; and when I see that this country is capable of being rendered so much richer than it is, I must demur to any objection to a change of the law which proceeds upon the idea that we already have enough of capital for all beneficial purposes. For in truth the whole of this objection seems to involve the notion, unsound in every economical view, that a country can have too much capital, or that all its capital should not be made available to the highest degree. Else why if the system of limited liability is advantageous in giving full effect to the capital of a poor country, are we to be deprived of the benefit? This is the strict logical result of such an objection, and it amounts therefore to a most obvious *reductio ad absurdum*.

"If it be true that there is some fear on the part of capitalists of the rivalry of societies and partnerships under the principle of limited liability, I venture to think that such fear is unwarranted by the sound principles of economical science. The general increase of the capital of the country, or the rendering more available what exists, must operate favourably on every branch of trade. New enterprises undertaken, new fields of industry cultivated, and new markets opened up do not necessarily interfere with the old ones. And if the present law *does* give to those possessed of large capitals a monopoly in certain departments of trade and manufactures, I have yet to learn that such a state of things tends to the public advantage, or that those who benefit by it would not benefit still more under a system of unlimited competition and the full development of all our resources.

"There is one aspect of the question which I am anxious to bring before the notice of the society, both because I think it has not occupied a sufficiently prominent place in most of the discussions on this subject, and also because, although it really forms the most important element in the whole question, it does not strictly fall within the cognizance of any of our committees. I allude to the social bearings of the question,—its relations to the present state and prospective condition of the working classes. The great inequality of property in this country is no doubt productive of many social evils; and all laws whose tendency it is artificially to maintain this inequality, must be regarded as impolitic and unwise. Such are the law of primogeniture and the law of unlimited liability in partnership. The latter of these is no doubt productive of the greatest evils. 'What the working classes

feel,' says Mr. J. S. Mill, 'is not so much the inequality of property, considered in itself, as the inequality consequent upon it, which unhappily exists now, namely, that those who already have property have so much greater facilities for getting more, than those who have it not, have for acquiring it.' That the present law of partnership throws impediments in the way of working men acquiring property, is a matter of which there can be no question. The expense and difficulty of obtaining an act or a charter render it impossible for them to undertake schemes on the principle of limited liability, and with regard to ordinary partnerships, the formidable responsibility which may be incurred prevents persons possessed of capital from assisting working men in undertakings which they might often be qualified to carry on effectively. And what renders the evil more serious is, that at the present day trade and manufactures can in general only be carried on successfully by means of large capitals; so that the difficulty of a working man in bettering his condition is now greater than ever, and those who have saved a little money have no means of investing it at a profit at all proportionate to that which their employers enjoy. Of course, all this tends to prevent the formation of habits of frugality and saving among the working classes, and to foster a general spirit of discontent with their condition, which leads them often to regard unfavourably the legitimate profits of capital. The consequence of which is, that a hostile spirit subsists to a very great degree in the manufacturing districts between employers and employed, and which occasionally breaks forth in the 'strikes' and 'lock-outs,' from which the general interest of the country suffers, and which threaten our whole social system.

"I cannot but think that if a system of partnership with limited liability were introduced, which would allow the working classes to unite together in carrying on the business with which they were acquainted, and which should afford greater facilities for intelligent and industrious artisans being taken into partnership by their employers, or receiving assistance from persons possessed of capital, it would tend both to the prosperity of the country, and to the peace and happiness of a large portion of the community. Considering the discontent and the socialist tendencies which undoubtedly exist in the manufacturing districts, I see no remedy for the present evils so direct and efficacious as a change in the law, which should afford to the working classes the opportunity of becoming capitalists themselves, and participating, according to their industry and frugality, in the profits of capital. And with the views which I entertain, I do not rest the matter solely on the grounds of policy and expediency; but regard the change with reference to the working classes, as well as to the rest of the community, as a measure of substantial justice."

## NOTICES OF NEW BOOKS.

*A Practical Treatise on the Law, Privileges, Proceedings, and Usage of Parliament.* By THOMAS ERSKINE MAY, Esq., of the Middle Temple, Barrister-at-Law, one of the Examiners for Standing Orders in both Houses of Parliament, and Taxing Officer of the House of Commons. Third Edition, revised and enlarged. London: Butterworths. 1855. Pp. 704.

THIS new edition of Mr. May's Practice comprises the latest precedents of parliamentary proceedings to the end of the last Session; and the numerous changes of practice, particularly relating to private Bills, are carefully introduced into the work, with much new matter and very numerous references.

The first part of the volume treats of the constitution, powers, and privileges of Parliament; the second of the practice and proceedings in Parliament; and the third, the manner of passing *private bills*.

This third division of the work contains the following chapters:—

"Distinctive character of private bills: preliminary view of the proceedings of Parliament in passing them.

"Conditions to be observed by parties before private bills are introduced into Parliament: proof of compliance with the standing orders.

"Course of proceedings upon private bills introduced into the House of Commons; with the rules, orders, and practice applicable to each stage of such bills in succession, and to particular classes of bills.

"Course of proceedings in the Lords upon private bills sent up from the Commons.

"Rules, orders, and course of proceedings in the Lords upon private bills brought into the House upon petition: and proceedings of the Commons upon private bills brought from the Lords. Local and personal, and private Acts of Parliament.

"Fees payable by the parties promoting or opposing private bills. Taxation of costs of parliamentary agents, solicitors, and others."

From the last chapter relating to *Fees payable and the taxation of Costs*, we extract the following passages:—

"The fees which are chargeable upon the various stages of private bills, and are payable by the several parties promoting or opposing such bills, have been settled in both Houses. The tables of fees are well known to parliamentary agents; they are published in the standing orders of the Commons, and in the House of Lords they are separately printed and are readily accessible to parties interested.

"It is declared by the Commons, 'That every Bill for the particular interest or benefit

of any person or persons, whether the same be brought in upon petition or motion, or report from a Committee, or brought from the Lords, hath been and ought to be deemed a private bill within the meaning of the table of fees; and that 'the fees shall be charged, paid, and received at such times, in such manner, and under such regulations, as the speaker shall from time to time direct.'<sup>1</sup>

"In both Houses there are officers whose special duty it is to take care that the fees are properly paid by the agents, who are responsible for the payment of them. If a parliamentary agent or a solicitor acting as agent for any bill or petition be reported as defaulter in the payment of the fees of the House, the Speaker orders that he shall not be permitted to enter himself as a parliamentary agent, in any future proceeding, until further directions have been given. In the House of Commons the whole of the fees were formerly collected and carried to a fee fund, whence the salaries and expenses of the establishment were partly defrayed; the balance being supplied from the Consolidated Fund. But by the 12 & 13 Vict. c. 72, all moneys arising from the fees of the House are carried to the Consolidated Fund; and the officers are paid from the public revenues. In the House of Lords a considerable portion of the fees is appropriated to a general fee fund; but a part is still reserved for the particular use of officers, whose emoluments are derived from that source.

"In the case of Chippendall's Divorce Bill in 1850, the promoter petitioned to be allowed to prosecute the bill *in forma pauperis*, and in both Houses this privilege was conceded to him, on proof of his inability to pay the fees. The Committee on the bill in the Commons, to whom his petition had been referred, distinguished his case from that of the suitor for any other kind of bill, and considered that the remission of the fees would not afford a precedent in other parliamentary proceedings."

"In pursuance of an address of the House of Commons, in 1829, the fees payable upon all bills for continuing or amending Turnpike Road Acts, which receive the Royal Assent, are discharged by the Treasury."

"The last matter which need be mentioned in connexion with the passing of private bills, is the taxation of the costs incurred by the promoters, opponents, and other parties. Prior to 1825 no provision had been made by either House, as in other Courts, for the taxation of costs incurred by suitors in Parliament. In 1825 an Act was passed to establish such a taxation in the Commons;<sup>4</sup> and in 1827 another Act was passed, to effect the same object

in the Lords.<sup>5</sup> Both these Acts, however, were very defective and have since been repealed. By the present 'House of Commons' and House of Lords Costs Taxation Acts,'<sup>6</sup> a regular system of taxation has been established in both Houses, and every facility is afforded for ascertaining the reasonable and proper costs arising out of every application to Parliament.

"In each House there is a taxing officer, having all the necessary powers of examining the parties and witnesses on oath, and of calling for the production of books or writings in the hands of either party to the taxation. Lists of charges have been prepared, in pursuance of these Acts, in both Houses, defining the charges which parliamentary agents, solicitors, and others will be allowed to charge for the various services usually rendered by them."

"Any person upon whom a demand is made by a parliamentary agent or solicitor, for any costs incurred in respect of any proceedings in the House, or in complying with its standing orders, may apply to the taxing officers for the taxation of such costs. And any parliamentary agent or solicitor who may be aggrieved by the nonpayment of his costs, may apply, in the same manner, to have his costs taxed, preparatory to the enforcement of his claim. The client, however, is required by the Act to make this application within six months after the delivery of the bill. But the Speaker in the Commons, or the Clerk of the Parliaments in the Lords on receiving a report of special circumstances from the taxing officer, may direct costs to be taxed after the expiration of six months.

"The taxing officer of either House is enabled to tax the whole of a bill brought before him for taxation, whether the costs relate to the proceedings of that House only, or to the proceedings of both Houses; and also other general costs incurred in reference to the private bill or petition. And each taxing officer may request the other, or the proper officer of any other Court, to assist him in taxing any portion of a bill of costs. And the proper officers of other Courts may, in the same manner, request their assistance in the taxation of parliamentary costs.

"In the Commons the taxing officer reports his taxation to the Speaker, and in the Lords to the Clerk of the Parliaments. If no objection be made within 21 days, either party may obtain from the Speaker or Clerk of the Parliaments, as the case may be, a certificate of the

<sup>1</sup> Table of Fees.

<sup>2</sup> See Report, 25th July, 1850; 105 Com. J. 563. In 1604 counsel was assigned to a party, in a private bill, *in forma pauperis*, he 'being a very poor man.' 1 Com. J. 241.

<sup>3</sup> 84 Com. J. 90. <sup>4</sup> 6 Geo. 4, c. 69.

<sup>5</sup> 7 & 8 Geo. 4, c. 64.

<sup>6</sup> 10 & 11 Vict. c. 69; 12 & 13 Vict. c. 78.

<sup>7</sup> These lists are printed for distribution to all persons who may apply for them.

costs allowed, which in any action brought for the recovery of the amount so certified, will have the effect of a warrant of attorney to confess judgment, unless the defendant shall have pleaded that he is not liable to the payment of the costs."

We have had occasion, in reviewing the former editions of Mr. May's book, to notice the care and research bestowed in collecting the materials, and the skill with which they are arranged. These excellent qualities, appertaining to a legal work, have been continued and diligently exerted in the present edition, which makes its appropriate appearance at the commencement of another Session of Parliament. We commend it to all who are engaged as solicitors in the important and profitable business of parliamentary practice.

## LAW OF VENDOR AND PURCHASER.

### ACCEPTANCE OF CONTRACT WITHIN REASONABLE TIME.

UNLESS a valid acceptance be given within a reasonable space of time, to a written offer to sell an estate, it will be treated as abandoned; and where no step had been taken within five years, a bill to enforce the contract was dismissed. *Williams v. Williams*, 17 Beav. 213.

### EFFECT OF CONDITIONS OF SALE ON INQUIRY INTO TITLE.

If conditions of sale simply state the facts, and stipulate that the purchaser shall take such title or such interest as the circumstances detailed would confer upon him and no other, the purchaser must accept it, whatever it may be. But if they go on to state that the vendors have power to sell the fee, the purchaser is entitled to examine into the question whether the vendors have anything to sell or not, as their power so to do may have arisen from separate and independent sources. *Johnson v. Smiley*, 17 Beav. 223.

### LIABILITY OF PURCHASER TO SEE TO APPLICATION OF PURCHASE-MONEY.

A testator ordered all his just debts and funeral expenses to be paid by his executors, and then directed the expenses of an annual mass for the repose of his soul to be defrayed out of the residue of his estates, and after giving certain legacies, he gave the residue of his real and personal estates, subject as aforesaid, to his son, whom he appointed with another per-

son his executors. The son received personal estate and misapplied the same, and afterwards sold a freehold house to the defendant, who had notice of the will. A legacy of 2,000*l.* had not been paid, and the plaintiff now claimed it from the purchaser as a charge on the property bought by him. The *Master of the Rolls* held, that the purchaser was not bound to see to the application of the purchase-money, and that he was not liable to make good the charge, inasmuch as if the legacies were charged on the real estate, the debts must also be charged thereon, and that therefore the son was able to give valid receipts for the purchase-money of the real estate. *Dowling v. Hudson*, 17 Beav. 248.

## POINTS IN COMMON LAW PRACTICE.

### JURISDICTION TO RETURN RULES AT CHAMBERS.

ALTHOUGH it is not the practice to enlarge rules to Chambers, without the consent of both parties, it is competent to the Court, in cases of necessity, to grant rules *nisi* on the last day of Term, returnable at Chambers. *Casse v. Wright*, 14 Com. B. 562.

### AMENDMENT AFTER TRIAL BY ADDING PLEA.

Per *Jervis*, C. J.—"It is by no means clear that, even after trial, leave may not be given to amend by adding a plea, where it was properly asked for at the time of the trial." *Charnley v. Grundy*, 14 Com. B. 608.

## NOTES OF THE WEEK.

### ATTENDANCE AT THE EQUITY JUDGES' CHAMBERS DURING THE CHRISTMAS VACATION.

THE Chambers of the Vice-Chancellor Sir John Stuart, will be open every day, except Mondays and Saturdays, from 11 till 1, to dispose of applications for Time..

### LAW APPOINTMENTS.

Mr. *Freeland Filliter*, of Wareham, has been appointed Clerk to the Burial Board of Swanage.

Mr. *Thomas Standbridge* has been appointed Town Clerk of Birmingham, in the room of Mr. Wm. Morgan, resigned.

Mr. *Robert Phippen*, solicitor, has been elected Sheriff of the City and County of Bristol.

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

WE observe that Lord Brougham has given notice of renewing his Bill to Assimilate the Law of England to that of Scotland in regard to Dishonoured Bills of Exchange and Notes, and to enable the holder to register these negotiable instruments, and in six days to issue Execution. Under the Common Law Procedure Act of 1852, a judgment may be obtained in *eight* days in an action on a bill or note where there is *no defence*. Execution, however, is mercifully stayed for another eight days. We feel sure that the noble lord does not mean to exclude *just* defences to actions on bills of exchange, nor does he intend to overwhelm the drawer or indorser, who may be unable instantaneously to pay a bill which the acceptor, who is primarily liable, has neglected to honour. There are 19 points of difference between the Laws of England and Scotland relating to bills and notes. Should we not wait till the Commissioners on Mercantile Law have made their report and published the evidence given before them, and weighed and considered the evidence and the views of the Commissioners, prior to legislating on the subject, especially as the proposed Bill comprises so small a part of the 19 sections of diversity? Moreover, the other heads of

Mercantile Law, especially as to debtors and creditors in general, should be "much pondered upon," ere we engraft a solitary, but most important, change in our Commercial Law and in transactions of everyday occurrence.

In the House of Commons, a notice has been given by Mr. Crauford of reviving the Bill of last Session, enabling the Courts in England, Ireland, and Scotland, to enforce the judgments respectively of the other parts of the United Kingdom. This appears to be a just measure, but we shall, of course, reconsider the Bill and its several enactments when we see it in print.

With the War Bills, to pass which the Parliament has been convened, we have strictly no concern. To the Foreign Enlistment Bill, we confess our aversion, unless it could be demonstrated as absolutely necessary: *necessitas non habet legem*. In the Militia Bill we are so far interested, that we believe a large number of the younger men of the Profession will soon appear as officers, not in her Majesty's Superior Courts, but in her valiant Army,—not to prosecute or defend her subjects in suits or actions, but to engage in the great warfare in which the nation is engaged. We know, indeed, that many who are under articles of clerkship have already accepted commissions in the militia.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*South Wales Railway Company v. Wythes and another.* Dec. 12, 1854.

#### SPECIFIC PERFORMANCE OF CONTRACT TO CONSTRUCT RAILWAY. — EXECUTION OF BOND.

*Held, dismissing with costs an appeal from the decision of Vice-Chancellor Wood, that specific performance will not be decreed of a contract entered into by the defendants to construct the works of a branch line of the plaintiffs' railway, and for the execution of a bond in a penal sum for the performance of the works.*

THIS was an appeal from the decision of Vice-Chancellor Wood allowing a demurrer to this bill, which was filed to enforce the specific performance of a contract entered into by the defendants to construct the works of a branch line of the plaintiffs' railway to Pembroke, and also to execute a bond in the penal sum of 50,000*l.* for the performance of the works in accordance with their agreement. *Ranger v. Great Western Railway Company*, 1 Rail. Ca. 1, was referred to.

*Rolt, G. M. Giffard, and Karslake* for the appellants; *Daniel and Babington* for Mr. Wythes; *W. M. James, Rogers, and Selwyn* for the other defendant.

The Lords Justices said, that the contract was not such as this Court could compel the defendants to perform, and that the appeal must be dismissed with costs.

### Master of the Rolls.

*Morgan v. Hatchell.* Dec. 9, 1854.

#### ATTESTATION OF DEED POLL APPOINTING GUARDIAN TO INFANT.

*Held, that the attestation of a deed poll appointing a guardian to an infant, is properly attested by the guardian and the solicitor acting in the matter, under the 12 Car. 2, c. 24, s. 8.*

IT appeared that by a deed poll dated May, 1854, Mr. Morgan, of Wexford, appointed Mrs. Boyse as guardian to his infant daughter, and that its execution was witnessed by the solicitor acting in the matter, and by Mrs. Boyse. The question was now raised upon the death of Mr. Morgan, whether Mrs. Boyse was a com-

petent witness, under the Statute of 12 Car. 2, c. 24, s. 8.<sup>1</sup>

R. Palmer, Follett, Cairns, Hall, and Young, for the several parties.

The Master of the Rolls said, that there was no reason why Mrs. Boyse should not be a good witness to the deed. A trustee or a legatee were perfectly good witnesses to a will, as although the Statute debarred them from taking any interest thereunder, it did not affect their competency. The attestation was therefore good, and the deed a valid instrument.

#### Vice-Chancellor Kindersley.

Ewart v. Williams. Dec. 7, 1854.

EQUITY JURISDICTION IMPROVEMENT ACT.—BOOKS USED AS PRIMA FACIE EVIDENCE.—AFFIDAVIT OF DECEASED PERSON.

Order on motion under the 15 & 16 Vict. c. 86, s. 54, for leave to use as *prima facie* evidence certain books in which were entered the transactions in respect of which the suit related, and also for leave to use the affidavit of a person who was since dead; and held, that the Act is retrospective.

THIS was a motion for leave to use certain books as *prima facie* evidence before the Master under the 15 & 16 Vict. c. 86, s. 54,<sup>2</sup> and also that the affidavit of a person since dead might be used. It appeared that the plaintiffs, who were brokers, had had large transactions (and in respect of which the suit related) with the defendant in the purchase of shares, and that their clerk entered all the transactions of the firm, by their direction, in the books in question.

Bayshawe in support; Cairns and Petersdorff, contra.

The Vice-Chancellor said, that Act was retrospective and applied to the present case.

<sup>1</sup> Which enacts, that "where any person hath or shall have any child or children under the age of 21 years, and not married at the time of his death, that it shall and may be lawful to and for the father of such child, whether born at the time of the decease of the father or at that time in *ventre sa mere*, or whether such father be within the age of 21 years, or of full age, by deed executed in his lifetime or by his last will and testament in writing, in the presence of two or more credible witnesses, in such manner and from time to time as he shall respectively think fit, to dispose of the custody and tuition of such child or children for and during such time as he or they shall respectively remain under the age of 21 years or any lesser time, to any person or persons in possession or remainder."

<sup>2</sup> Which enacts, that "it shall be lawful for the Court, in cases where it shall think fit so to do, to direct that, in taking the account, the books of account in which the accounts required to be taken have been kept, or any of them, shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised."

There was nothing in the books so irregular as to preclude their being taken as *prima facie* evidence, and the motion would accordingly be granted.

Ex parte Dean, &c. of Christchurch, Oxford. Dec. 16, 1854.

RAILWAY COMPANY.—PURCHASE OF COLLEGE LANDS.—PAYMENT OF DIVIDENDS.

On the purchase by a railway company of lands belonging to the dean and chapter of a college, the money was paid into Court. It appeared that the land was leased under two leases for 21 years, granted in 1839 and 1840, at small reserved rents, and renewable every seven years on payment of a fine: Held, that an order would be made for the investment of the funds in Court, for the payment to the dean and chapter of so much of the dividends as would be equivalent to the amount of rent actually received, and for the accumulation of the residue until further order.

Cairns appeared in support of this petition, for the investment of two sums of money which had been paid into Court upon the purchase, in the year 1853, by the Great Western Railway Company, of certain property belonging to the petitioners, for the purposes of their railway. It appeared that the property was held on leases for 21 years, granted respectively in 1839 and 1840, at a small reserved rent, and renewable every seven years on the payment of a fine. The petition prayed the payment of the dividends to the dean and chapter.

The Vice-Chancellor said, that the corporation was entitled to receive the full value of the fee simple in possession of the lands sold, and that the only way to secure this would be to direct the dividends to be accumulated until they could be re-invested in land, to be conveyed to the same uses as those of the land sold. In the present case, however, it would be until the termination of the period comprised in the lease. An order would therefore be made for the investment of the funds in Court, for the payment to the petitioners of so much of the dividends as would be equivalent to the amount of rent actually received, and for the accumulation of the residue until the further order of the Court, with liberty to apply.

Haggitt v. Stiff. Dec. 18, 1854.

AFFIDAVIT SWORN IN FOREIGN COUNTRY.—NOTARIAL CERTIFICATE.—CONSUL OR VICE-CONSUL.

An application was refused for an order on the clerk of records and writs to file an affidavit which had been sworn before a notary-public in the town of Geneva, Ontario county, New York, in the United States, to which there was a certificate of the consul at New York, verifying the official character of the notary; and held it should be taken before a consul or vice-consul, under the 15 & 16 Vict. c. 86, s. 22.

THIS was an application for an order on the clerk of records and writs to file an affidavit in this cause, which had been sworn before a notary-public of the town of Geneva, Ontario county, New York, in the United States. It appeared that there was a certificate by the English consul at New York, verifying the official character of the notary.

*Nalder*, in support, referred to the 15 & 16 Vict. c. 86, s. 22.<sup>1</sup>

The Vice-Chancellor said, the section provided that affidavits sworn in foreign parts out of her Majesty's dominions should be sworn before a consul or vice-consul, and the swearing before a notary-public only applied to places within the Queen's dominions. Previous to this Statute, the acts of a notary-public were not recognised in any way, except in certain mercantile transactions. The application must therefore be refused.

#### Vice-Chancellor Stuart.

*In re Goss' Estate.* Dec. 8, 1854.

RAILWAY COMPANY.—COSTS OF PETITION ON DEATH OF A TRUSTEE TO WHOM DIVIDENDS OF PURCHASE-MONEY PAYABLE.

*An order had been made for the payment of the dividends on a fund paid into Court by a railway company for the purchase of lands, to the two trustees of the testator's will nominatim. On the death of one, and petition for payment of the dividends to the survivor, held, that the company were liable to the costs.*

*Speed* appeared in support of this petition for payment to the surviving trustee of the dividends of a fund paid into Court by the Great Western Railway Company, for the purchase

<sup>1</sup> Which enacts, that "all pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations, and attestations of honour in causes or matters, depending in the High Court of Chancery, and also acknowledgments required for the purpose of enrolling any deed in the said Court, shall and may be sworn and taken in Scotland or Ireland, or the Channel Islands, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any Judge, Court, notary-public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively, or before any of her Majesty's consuls or vice-consuls in any foreign parts out of her Majesty's dominions; and the Judges and other officers of the said Court of Chancery shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, notary-public, person, consul, or vice-consul attached, appended, or subscribed to any such pleas, answers, disclaimers, examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or other documents to be used in the said Court."

of certain land. It appeared that an order had been made for an interim investment, and for payment of the dividends to the two trustees of the testator's will *nominatim*, and that one had since died.

*Hemming* for the railway company, applied for their costs, as the order should have directed payment to the trustees and the survivor of them, or the trustee or trustees for the time being.

The Vice-Chancellor said, that the company must pay the costs of the petition, as it was as much their fault that a proper order was not made on the former occasion.

#### *Broughton v. White.* Dec. 12, 1854.

TRUSTEE-SOLICITOR.—COSTS OUT OF POCKET.

*A solicitor, member of a firm, was appointed co-trustee with the testator's widow, and the testator had contracted before his death for the sale of certain real estate, which his widow employed the solicitor to carry into effect: Held, disallowing exceptions to the report of Master Kindersley, that the solicitor was not entitled to more than the costs out of pocket.*

IT appeared in this creditors' suit for the administration of the estate of the late Thomas Broughton of Boston, that the testator had appointed his wife and the defendant, Francis Thirkill White, his trustees, and that the testator, at the time of his death, had entered into several contracts for the sale of parts of his real estate, which contracts the defendant had carried out by the direction of the testator's wife. The Master Kindersley had allowed Mr. White only the amount actually paid and disbursed by him and his copartner in the business, but had disallowed all other costs, whereupon exceptions were taken to the report.

*Makins* and *J. Hinde Palmer* in support, cited *Craddock v. Piper*, 1 M'N. & G. 673.

*Bacon* and *C. Chapman Barber*, contra, referred to *Lincoln v. Windsor*, 9 Hare, 158.

The Vice-Chancellor said, that the only question was, whether the defendant, being a solicitor and appointed a co-trustee with the testator's widow, was entitled to the allowance of certain charges as solicitor incurred in the execution of the trust by him and the firm of which he was a partner. There was no doubt as to the rule, which was founded on the principle that a solicitor could not be allowed to make a profit out of his trusteeship. But for the decision of Vice-Chancellor Turner in *Lincoln v. Windsor*, and the finding of Master, now Vice-Chancellor Kindersley in the present case, he should have thought the dictum of Lord Chancellor Cottenham applied to such a case as the present, and he could not dispose of the case without expressing a hope that the time would soon come when the law relating to this subject would be established on some ground which would satisfy the Public and the Profession. Lord Cottenham had materially modified the rule in *Craddock v. Piper*, that a



solicitor, who was a trustee and a party to the cause, was not entitled to charge costs, except those out of pocket, by holding it did not extend beyond the case of his acting for himself alone, nor to where he acted for a body of trustees, although he might be one; and he would have been glad to extend the modification of this rule to the present case. The exceptions must, however, be overruled.—No order as to costs.

#### Vice-Chancellor Wood.

*Nichols v. Hancock; Bewley v. Nichols.* Dec. 8, 1854.

DISMISSAL OF BILL ON MOTION FOR DECREE UNDER EQUITY JURISDICTION IMPROVEMENT ACT.

*Where the defendants are willing, that on a motion for a decree, under the 15 & 16 Vict. c. 86, s. 16, the cause should be treated as if it were a hearing in the usual way: Held, that the bill may be dismissed.*

THIS was a motion for a decree under the 15 & 16 Vict. c. 86, s. 16,<sup>1</sup> for the specific performance of an award.

The Vice-Chancellor having held, that neither of the bills could be sustained, dismissed the bills, the defendants being willing that the case should be dealt with in the same way as on a hearing of the cause in the usual way.

#### Court of Exchequer.

*Oulds v. Harrison.* Dec. 18, 1854.

BILL OF EXCHANGE.—INDORSEE AGAINST ACCEPTOR.—PLEA OF FRAUD.—DEMURRER.

*A demurrer was allowed to a plea to an action by the indorsee against the acceptor of a bill of exchange, which set out that the bill was indorsed to the plaintiff by fraud and collusion with the drawer in order to deprive the defendant, to whom the drawer was indebted, of the power of setting off the debt against the bill in an action by the drawer.*

To this action by the indorsee of a bill of exchange against the acceptor, the defendant pleaded that the bill was indorsed to the plaintiff by fraud and collusion with the drawer, in order to deprive the defendant, to whom the drawer was indebted, of the power of setting-off the debt against the bill in an action by the drawer. There was a demurrer to this plea.

*Cur. ad. vult.*

The Court said, that the demurrer must be allowed, and that the plaintiff was entitled to judgment.

<sup>1</sup> Which enacts, that "upon any such motion for a decree or decretal order, it shall be discretionary with the Court to grant or refuse the motion, or to make an order giving such directions for or with respect to the further prosecution of the suit, as the circumstances of the case may require, and to make such order as to costs as it may think right."

#### Court of Bankruptcy.

(*Coram Mr. Commissioner Foulblague.*)

*In re Shuttleworth and Sons.* Dec. 18, 1854.

AUCTIONEERS.—RIGHT TO SPECULATE WITH DEPOSITS.—CERTIFICATE.

*Semble, that auctioneers are not entitled to speculate with deposits of their customers, but that their profit consists in the commission arising from the sale of property intrusted for disposal.*

*Where bankrupts for some years back were aware of considerable deficiency, and had not since exercised all prudence and economy so as to retrieve their position, and never struck any balance, and were living beyond their incomes, and the bookkeeping was besides very bad: A third class certificate was only granted.*

THIS, the certificate meeting of the above bankrupts, who carried on the business of auctioneers.

*Bagley* for the assignees; *Parry* for the trustees under a will, under which they had received a sum of 3,000*l.*

*Lawrance and Linklater* for the bankrupts.

The Commissioner said, the first question was, whether an auctioneer was or was not entitled to speculate with deposits, or whether he was bound to consider them as deposits for which he was specifically required to account. On a strict principle of equity, auctioneers had no right to use such moneys, but a contrary opinion seemed to prevail throughout the mercantile community, which was to be regretted. But for this opinion the Court would have held, that for an auctioneer to make use of deposit moneys was, if not a breach of trust, very close upon it. This case was very different from that of bankers, part of whose business it was to employ deposits as a source of profits, whereas the profit of an auctioneer consisted of his commission arising from the sale of property intrusted for disposal. The next question was, whether the trade of the bankrupts had been prudently carried on? It appeared that so far back as 1847-8 the bankrupts were aware the firm was deficient to the amount of 4,800*l.*, and from that time every member of the firm ought to have been careful to conduct its transactions in a legitimate manner, and to exercise all prudence and economy so as to retrieve its position. This, however, had not been done. The bankrupts had never fairly looked their affairs in the face, no balance had been struck, and the bankrupts were living beyond their incomes. The bookkeeping, also, had been very bad. On the broad principle that the trading had been carried on most improvidently, although not fraudulently, and that the bookkeeping was of the worst description, the Court could not recognise the slightest trace of unavoidable loss or misfortune in the case, and the certificate must be of the third class. The causes of the failure were a rate of expenditure disproportionate to the profits, and bad book-keeping, and in these respects the younger bankrupts had been more to blame than their father. The father's certificate would be suspended for three months, and of the other bankrupts for two years.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—"Still attorneyed at your service."—*Shakespeare.*

SATURDAY, DECEMBER 30, 1854.

### REAL ESTATE CHARGES' ACT.

An important alteration in the Law will take place on the 1st January, 1855, in regard to mortgages on the estates of deceased persons. According to the present law, the equity of redemption of a mortgaged estate is alienable by the mortgagor and descends to his heir or devisee. The mortgagor, in fact, is deemed the owner of the estate, subject to the mortgage. On his decease, the lands will devolve on the heir or devisee; and the mortgage debt will be payable out of the *personal* estate of the mortgagor.

The Courts require very clear expressions in order to fasten the incumbrance on the devisee or legatee of property. Thus, a devise of lands, *subject to the mortgage or incumbrance thereupon*, does not so throw the charge on the estate as to exempt the funds; which by law are preferably liable; the testator being considered to use the terms merely as descriptive of the incumbered condition of the property, and not for the purpose of subjecting his devisee to the burthen.<sup>1</sup>

Even where the property devised "subject to the mortgage" was given upon trust for sale, and the proceeds were to be applied in the first instance in payment of the mortgage debt, it was held, that, as it appeared on the whole will that the testator did not intend to exonerate his personal estate from the mortgage debt, the devisees of the residue were entitled, under the general rule, to have the personalty applied in exoneration of the mortgaged estate.<sup>2</sup>

<sup>1</sup> See 2 Jarman on Wills, 553, and the cases there cited.

<sup>2</sup> *Wythe v. Hensiker*, 2 M. & K. 635.  
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If, then, the will should contain no intimation of an intention to the contrary, the devisee of a mortgaged estate is entitled to have the incumbrance discharged out of the following funds:—1. The general *personal* estate. 2. Lands expressly devised for the *payment of debts*. 3. Lands descended to the heir. 4. Lands devised charged with the debts.<sup>3</sup> Such is, and will be, the state of the law on this subject up to the 31st instant inclusive.

By the 17th and 18th Vict. c. 113, which received the Royal Assent on the 11th of August last and will come into operation on the 1st January, 1855, reciting that it is expedient that the law whereunder the real and personal assets of deceased persons are administered should be amended, it is provided as follows:—

That after the 31st December, 1855, when any person shall die entitled to any estate or interest in land or other hereditaments which at the time of his death shall be charged with the payment of money by way of mortgage,—and *shall not by his will, deed, or other document have signified a contrary intention*,—the heir or devisee shall not be entitled to have the mortgage debt satisfied out of the personal estate. But the land so charged shall be primarily liable to the payment of the mortgage

<sup>3</sup> 2 Jarm. Wills, 554. In *Howell v. Price*, 1 P. Wms. 290, it was held that the personal estate was liable to pay the mortgage; and if the mortgagee had died and the mortgagor came to redeem, he must pay the money to the executor, and not to the heir. In *King v. King*, 3 P. Wms. 353, it was decided that the heir of a mortgagor can compel the application of the personal estate to pay off a mortgage, notwithstanding there was no covenant from the mortgagor for the payment of the money.

debt, every part bearing its proportionate share.

The mortgagee, however, may obtain payment either out of the personal estate or otherwise.

It is also provided that the Act shall not affect the rights of persons claiming under any will or deed made *before* the 1st January, 1855.<sup>4</sup>

It will now of course become the duty of solicitors who prepare wills on or after the 1st January to ascertain the views of their clients, with respect to the mortgages or other incumbrances on their property, and to make due provision in case it be intended that the devisee should take the estate free from such incumbrances.

It has been observed that the provisions of this Statute may, unless guarded against, constitute an important step in the alteration of the Law of Primogeniture, and thus effect a change (not perhaps contemplated when the Act passed), in the objects and policy of the Law of Real Property, and the means of preserving the rank and influence of landed proprietors.

### DISHONOURD BILLS OF EXCHANGE BILL.

#### REGISTRATION AND "SUMMARY DILIGENCE."

THIS Bill, which was so much contested last Session, and at length withdrawn, has been again introduced by Lord Brougham, with a few amendments of considerable importance. The Lord Chancellor and Lord Campbell expressed a favourable opinion on the principle of the Bill, and the Profession will have to consider it, rather as it may affect their clients' interests, than as interfering with their own emoluments. In all defended actions on bills and notes, we believe the costs will be increased, and in undefended cases they will not be diminished.

The following are the clauses of the Bill:—

1. The provisions of this Act shall come into operation on the 24th day of August, 1855: provided always, that this Act shall not apply to any bill of exchange or promissory note drawn or made prior to the passing of this Act.

2. All bills of exchange and promissory notes shall, for the purposes of this Act, be noted, or noted and protested, as in the case of foreign bills of exchange.

3. It shall be lawful for the holder of a bill of exchange which has been noted for non-acceptance, or of a bill of exchange or promissory note which has on the day of its becoming due been noted for non-payment, and which bill of exchange or promissory note is free from erasure or alteration in any material part, except by striking out the name or names of an indorser or indorsers, to proceed under the provisions of this Act at any time after protest for non-acceptance or for non-payment and before the expiration of six months after the day of such bill or note becoming due; provided such holder shall, on or at any time previous to the day of such bill or note becoming due, have been the holder thereof or liable for the amount of the same, or shall, under the custom of merchants have paid such bill or note *supra* protest for the honour of the drawer of such bill or of any endorser on such bill or note.

4. It shall be lawful for her Majesty to appoint an officer, to be attached to the Court of Common Pleas, who shall be called "The Registrar of protested bills of exchange and promissory notes," and the said registrar so appointed shall keep a register in the said Court of Common Pleas, in an office situate within the city of London to be provided by the Lords Commissioners of the Treasury for the registration of protested bills and promissory notes as hereinafter provided; and such registrar may by a writing under his hand and seal appoint a deputy or deputies, who shall be previously approved of by the Lord Chief Justice of the Court of Common Pleas, and all registrations made and other Acts done by such deputy or deputies shall have the same effect as if made and done by such registrar.

5. Every holder of a dishonoured bill of exchange or promissory note which is free from erasure or alteration in any material part, except as aforesaid, may, after protest, register such bill of exchange or promissory note, and the protest thereon, in the register of the Court of Common Pleas, and shall thereupon be entitled to an order of such Court on such bill of exchange or promissory note against the parties to such bill or note, whose names are signed or endorsed thereon, for payment of the same, with interest and costs, within six days after service of such order, exclusive of the day of service, and in the form contained in the schedule to this Act annexed, marked No. 1, and upon the expiration of such six days after service of such order on any such party, without such payment having been made as aforesaid, the said order shall have the effect of a judgment against such party, and may be registered as such, and execution may then issue thereon against such party, on affidavit of the service of such order, which affidavit shall be endorsed on such order or annexed thereto: provided always, that in any case of doubt or difficulty arising to the registrar of protested bills of exchange and promissory notes in the execution of his duties under this Act, it shall be lawful for such registrar to refuse to register any bill of exchange or promissory note and

<sup>4</sup> The new Act will be found verbatim in the *Legal Observer* for 2nd September, p. 340.

protest thereon until such holder shall apply to and obtain the fiat or order of such Court or a Judge directing the registration of such bill or note and protest.

6. The registrar of protested bills of exchange and promissory notes shall cause to be made a seal of the said register office, and shall cause to be sealed or stamped therewith every bill of exchange, promissory note, and protest which shall be produced to him for the purpose of registration under this Act, and also every proceeding issued, entered, or taken under the provisions of this Act; and all certified copies of entries purporting to be sealed or stamped with the seal of the said register office shall be received in evidence without any further proof or evidence of such entry.

7. The order shall be endorsed with the name and place of abode of the attorney actually suing out the same; and when the attorney actually suing out any order shall sue out the same as agent for an attorney in the country, the name and place of abode of such attorney in the country shall also be endorsed on the said order; and in case no attorney shall be employed to sue out the order, then it shall be endorsed with a memorandum expressing that the same has been sued out by the plaintiff in person, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's residence, if any such there be.

8. Every attorney whose name shall be endorsed on any order issued by authority of this Act shall, on demand in writing made by or on behalf of any party against whom such order has issued, declare forthwith whether such order has been issued by him or with his authority or privity, and if he shall answer in the affirmative then he shall also declare in writing the profession, occupation, or quality, and place of abode of the holder of the bill or note on whose behalf such order has been issued, on pain of being guilty of a contempt of the Court; and if such attorney shall declare that the order was not issued by him, or with his authority and privity, all proceedings on the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge.

9. Any order for payment of a bill or note obtained under this Act may be served in any county.

10. Where any of the parties against whom such order has issued is a corporation aggregate, such order, in so far as such corporation is concerned, may be served on the head officer, clerk, treasurer, or secretary of such corporation.

11. The service of such order shall be by serving a copy thereof personally upon the party or parties against whom it is directed, wherever it may be practicable so to do; but it shall be lawful for the party who has obtained such order to apply from time to time, on affidavit, to the Court or to a Judge, and in case it shall appear to such Court or Judge that reasonable efforts have been made to effect

personal service on any of the parties against whom it issued, and either that the order has come to the knowledge of such party, or that he wilfully evades service of the same, and that such order has not been complied with, it shall be lawful for such Court or Judge to direct that execution shall issue as if personal service had been effected: provided always, that in case such service shall not be made on all the parties against whom such order shall be directed, such service shall nevertheless be good as against any party or parties upon whom service shall be actually made, and execution may issue against him or them, or against any party or parties with regard to whom such Court or Judge shall direct execution to issue, as if personal service had been effected.

12. In case any party to a dishonoured bill of exchange or promissory note against whom the holder of such bill or note wishes to proceed under the provisions of this Act but is residing out of the said jurisdiction, it shall be lawful for the said Court of Common Pleas or Judge on application by such holder to direct that an order for payment shall issue, in the form contained in the Schedule to this Act annexed marked No. 2, which order shall bear the endorsement contained in the said form, purporting that such order is for service out of the jurisdiction of the Court; and the time for payment of such bill or note in such order shall be determined by such Court or Judge, and with reference to the distance from England of the place where the party against whom such order has been obtained is residing; and it shall be lawful for the Court or Judge, upon being satisfied by affidavit that the order was duly served on the party against whom the same issued, having regard to the time allowed to such party for making payment of the bill or note on which such order issued, and that such order has not been complied with, to direct that such order shall, at the expiration of the time to be allowed, have the effect of a judgment within the jurisdiction of such Court.

13. Any order for service within the jurisdiction may be issued and marked as a concurrent order with one for service out of the jurisdiction, and an order for service out of the jurisdiction may be issued and marked as a concurrent order with one for service within the jurisdiction.

14. It shall be lawful for the party who has been served with any order for the payment of a bill of exchange or promissory note as aforesaid, at any time before execution levied, or before any writ of *fiery facias*, *levary facias*, or *elegit* issued on such order or judgment has been fully executed, to apply to the Court or a Judge to stay execution, which application must be supported by an affidavit disclosing what would constitute a legal or equitable defence to an action on the bill or note against the party seeking to stay execution, or facts which according to law would make it incumbent on the holder of such bill or note to prove in an action thereon that he gave a valuable consideration for the same, or such other facts

as the Court or Judge may deem sufficient to stay proceedings or for the making of such other order as hereinafter provided: provided always, that if the party served with such order shall be arrested on a writ of *capias ad satisfaciendum* issued on such order or judgment, it shall be lawful for him, at any time before he is discharged from custody, to apply to the Court or a Judge to set aside such writ, and to discharge him from custody, and to stay all further execution, which application shall be supported by affidavit as aforesaid.

15. In any of the said cases, if the Court or Judge shall think that such legal or equitable defence has been disclosed, execution may be stayed, or the party discharged from custody and execution stayed, as the case may be, or an issue in fact directed to be tried by the parties, or a special case to be stated by them for the opinion of the Court, in the same manner as if the question of fact or of law so directed to be tried or stated had been raised by consent of parties, without pleading under the provisions of the Common Law Procedure Act, 1852, or such other order made as to the Court or Judge shall seem meet; provided always, that in the proceedings in any issue or special case to be directed under this Act, the holder of the bill or note shall be plaintiff, and the party seeking to stay execution defendant; and the Court or Judge in any of the cases aforesaid shall have power to direct upon what terms, as to security for costs or otherwise, such issue shall be tried, or special case stated, or other order made as aforesaid.

16. Within six days after such issue or special case has been directed, or such further time as the Court or a Judge shall appoint, the party seeking to stay execution or to be discharged from custody shall give security for the payment of the bill or note, and interest thereon, and for the costs of protesting and registering the bill or note, and of the order and service of the same, and also for the costs of trying the issue or of the special case, and proceedings thereon, or pay into Court a sum of money which shall be deemed sufficient by such Court or Judge to abide the event of such issue or special case, otherwise execution shall proceed as if no such issue or special case had been directed: Provided always, that the Court or Judge may direct that such security shall not be required where the party applying for a stay of execution or discharge from custody can show to the satisfaction of the Court or Judge, upon affidavit, that his alleged signature to the bill or note has been forged, or that circumstance exist which affect the title of the holder with fraud, or that any other circumstances exist which, in the opinion of the Court or Judge, may render such security unnecessary; and in such case it shall be lawful for the Court or Judge, in its or his discretion, to direct that the holder shall find security for the defendant's costs of trying such issue or of such special case and proceedings thereon, or pay into Court a sum of money which shall be deemed sufficient by such Court or Judge to abide such event as aforesaid.

17. The costs of such issue in fact or special case shall be in the discretion of the Court.

18. Upon the finding of the jury on any such issue in fact the order for the payment of the bill or note shall be forthwith discharged, or execution shall forthwith be issued thereon, according to such finding, unless the Court or a Judge shall otherwise order, for the purpose of giving either party an opportunity for moving to set aside the verdict or for a new trial; and upon the judgment of the Court in any such special case the order for payment shall be forthwith discharged, or execution shall forthwith proceed thereon, according to such judgment, unless proceedings in error be taken by either party: provided always, that if the plaintiff has been discharged from custody by order of the Court or a Judge, such discharge shall not be a satisfaction of the debt due by such plaintiff on the bill of exchange or promissory note on which the order for payment originally issued.

19. No privilege shall be allowed to any attorney or solicitor to exempt him from the provisions of this Act.

20. Nothing in this Act contained shall be construed or taken to interfere with or affect any remedy which is now competent to the holder of or to any party to a bill of exchange or promissory note at Law or in Equity, nor be applicable to any bill of exchange or promissory note for a sum not exceeding 15*l*.<sup>1</sup>

21. It shall be lawful for the Judges of the Court of Common Pleas, or any three or more of them, of whom the Chief of such Court shall be one, from time to time to make all such general rules and orders for the effectual execution of this Act in the said Court as in their judgment shall be necessary or proper, and to establish a table of fees to be allowed to notaries-public for noting and protesting bills of exchange and promissory notes, and fixing all other costs to be allowed for and in respect of the matters herein contained, and to amend or alter such tables of fees from time to time.

22. The registrar who may be appointed under this Act shall be remunerated by way of salary, to be fixed and appointed by the Commissioners of her Majesty's Treasury; and such salary, and all the expenses of the office of registrar, shall be paid and payable out of the fees to be received by the registrar; and all the provisions contained in the 73rd chapter of the 15 & 16 Vict., with respect to the preparation of a table of fees, and to the entry thereof, and to the account to be rendered to the said Commissioners, and all the powers conferred by the said Act on the said Commissioners with respect to the officers of the Court there mentioned, and with respect to fees, salaries, allowances, and accounts, shall extend to and apply in every particular in the said Act contained to the officer to be appointed under this Act as registrar of protested bills of ex-

<sup>1</sup> This looks very much like an admission that the proposed new remedy will be more costly than the present.—Ed.

change and promissory notes: provided always, that during the first year of office, and until the said Commissioners have fixed and appointed the salary to be taken, the registrar shall be entitled to apply the fees to be received by him in payment of such salary, and of such expenses of the office as the said Commissioners may provisionally appoint and approve of.

23. All new or altered writs and forms of proceedings which shall be ordered and sanctioned by the Court of Common Pleas under the authority of this Act shall have the same force and effect as all other orders and rules of the said Court.

24. Every protest of a bill of exchange or promissory note shall, for the purposes of registration under this Act, be received by the registrar of protested bills of exchange and promissory notes without any evidence being required as to the signature or seal to such protest: provided always, that it shall be competent for any party to a bill of exchange or promissory note, to apply for and obtain a suspension of execution as hereinbefore provided on the ground that such bill of exchange or promissory note has not been duly presented, and the Court or Judge may if not satisfied require further proof that the presentation alleged in the protest has actually been made by the notary public by whom such protest shall have been made, or by some clerk of or apprentice to such notary public, or by some other person acting in his behalf in default of a notary public.

25. In any proceedings under this Act, on any bill of exchange or promissory note, the defendant may, at any time before execution levied, apply to the Court or to a Judge, on affidavit, showing that the bill of exchange or promissory note on which such proceedings have been taken, or his signature thereto or thereon, was obtained from him by any menaces, force, or false pretence, or other fraudulent means, or that such bill or note has been fraudulently appropriated or disposed of, and thereupon such Court or Judge may order the said bill or note to be forthwith deposited with the registrar of the Court to abide the further order of the Court or Judge, and may further order that all proceedings thereon shall be stayed until the plaintiff shall have given security for the costs thereof.

26. Any affidavit for the purpose of proving service of any order for the payment of any dishonoured bill of exchange or promissory note issued under this Act against any person residing out of her Majesty's dominions, or service of notice of such order, or for the purpose of making any application to the Court or a Judge under this Act, may be sworn before any consul general, consul, vice-consul, or consular agent for the time being appointed by her Majesty at any foreign port or place; and every affidavit so sworn by virtue of this Act may be used and shall be admitted in evidence, saving all just exceptions, provided it purport to be signed and sealed by such consul-general, consul, vice-consul, or consular agent: pro-

vided always, that if any person shall forge the signature of the deponent or the signature or seal of any such consul-general, consul, vice-consul, or consular agent to any such affidavit, or shall use or tender in evidence any such affidavit with a false or counterfeit signature or seal thereto knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to imprisonment for any term not exceeding three years nor less than one year, with hard labour; and every person who shall be charged with committing any such felony may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed, in the county or place in which he shall be apprehended or be in custody; and every accessory before or after the fact to any such offence may be dealt with, tried, and, if convicted, sentenced; and his offence may be laid and charged to have been committed, in any county or place in which the principal offender may be tried: provided also, that if any person shall wilfully and corruptly make a false affidavit before such consul-general, consul, vice-consul, or consular agent, every person so offending shall be deemed and taken to be guilty of perjury, in like manner as if such person had wilfully and corruptly made such false affidavit in England before competent authority, and shall and may be dealt with, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed in any county or place in which he shall be apprehended or be in custody as if his offence had been actually committed in that county or place.

27. The word "holder" shall be taken to include any party or parties who shall, under the custom of merchants, have paid *supra* protest any bill of exchange or promissory note for the honour of the drawer of such bill of exchange or of any indorser on such bill of exchange or promissory note, and the word "Judge" shall be held to mean and include any Judge of the Superior Courts of Common Law.

28. In citing this Act in any instrument, document, or proceeding, it shall be sufficient to use the expression "The Summary Execution on Bills of Exchange Act, 1855."

#### SCHEDULE.

##### No. 1.

In the Common Pleas.

On the            day of            A.D. 18  
VICTORIA, by the Grace of God, &c.,            To  
C. D., of            in the county of  
E. F., of            in the county of            &c.  
(England to wit).            A. B.            in his own  
proper person [or by G. H., his attorney] appeared and craved that the protest underwritten should be recorded in the register of this Court for protests of bills of exchange and promissory notes for execution, according to the "Summary Execution on Bills of Exchange Act, 1855," which was accordingly done, as follows:

## [Copy the Bill or Note and Protest.]

Therefore it is considered, that the said *A. B.* recover against the said *C. D., E. F., &c.,* £ with interest thereon since the said bill (or note) became due, together with the sum of £ for costs of protest, registration, and service unless the said sum of £ with such interest and costs as aforesaid shall be paid within six days after service hereof, exclusive of the day of service. We command you, therefore, that within six days after the service of this order on you, exclusive of the day of such service, you make payment to the said *A. B.* of the said respective sums of £<sup>1</sup> and £<sup>2</sup> together amounting to the sum of £ and also such interest as aforesaid, and take notice, that in default of your so doing this order will have the effect of a judgment, and the said *A. B.* may proceed to execution against you: Take notice, that if you can show cause why, on non-payment within such six days, execution should not issue against you upon this order you must apply upon affidavit showing such cause to the Court of Common Pleas at Westminster, or to a Judge, without delay.

Witness, &c.

## No. 2.

(Same as No. 1.)

*Indorsement to be made on Writ before Service thereof.*

This writ is for service out of the jurisdiction of the Court.

It seems evident, on a cursory perusal of several of the clauses in this Bill, that a long series of decisions may be expected on the construction of the Act (if it should pass) before the change can be settled or the anticipated advantages and disadvantages sufficiently tried.

## TRANSFER OF LAND BY REGISTER.

AN able pamphlet has just been published in the form of a Letter to the Lord Chancellor, on "The Contemplated Transfer of Land by Register," written by Joseph Goodeve, Esq., Barrister-at-Law; and we deem it important to place the views of the Author before our readers.

We shall, in the first instance, state Mr. Goodeve's view of the nature of the proposed plan for remedying the evils complained of in the present system.

"The scheme," says the Author, "in contemplation involves the abolition of the existing mode of transfer of land, and of the manifestation of the title to it; and proposes, in substitution for the present

transfer by deed, to constitute a registry—at the same time the medium of conveyance of all the lands in the kingdom and the index of title to them.

"To accomplish this two plans have been proposed, *one* to make the register itself the instrument of assurance,—as in the case of stock, the transfer from one holder to another is effected by the mere substitution in the bank books,—*the other* is to have a short conveyance, somewhat after the fashion of a railway one, which, however, is to be registered, and the joint operation, the execution of the deed and its registration, is to complete the transfer."

"Independently of its subsequent registration, the deed, it is understood, would connect itself, in its parcels, with the register, and the register, in its turn, with schedules or maps, and the deed would have operation only by reference to them. The distinction in the mechanism, and the ultimate preference of even the latter of the two plans, would still leave the transaction practically a register transfer,—certainly so for all the purposes of this discussion,—and, in the observations which follow, I shall accordingly take leave to consider both but one and the same scheme.

"Regard being had to the same objects, for the attainment of which the new system has been proposed, it would appear to be its most essential element that the act of registration should create a title, in the nature of a parliamentary warranted one, in the party registered, and so as on all future dealings to exclude the occasion for any retrospective investigation or inquiry as to the past ownership, just in the same way as, in the instance of stock, the bank books are taken as the conclusive evidence of the title and the right to transfer."

Whether, however, this, in its fulness, is to be the immediate and contemporaneous result of the establishment of a register, or to be matter of gradual accomplishment only, (Mr. Goodeve observes) is that upon which the proposers of the scheme appear divided in opinion, both agreeing only in the immediate opening of the register.

"The recommendation of one party is to make the registration of every title conclusive of that title's validity from the moment of its registration, founding the registration only on some previous process of authentication; though what that process is to be, does not, as yet, appear developed. The plan of the other party is to admit to registration the dealings with the property posterior to the opening of the registry, or rather to make the register the medium of transfer on the occasion of those dealings; but, while conferring on all transfers subsequent to the original one the virtue of a registry title, to leave the title anterior to the original registration open to its original

<sup>1</sup> Principal moneys in bill or note.

<sup>2</sup> Costs.

condition, with (if any) its original infirmities, and to trust the care of these only to the subsequent lapse of time.

"As little does it appear to be altogether determined by the proposers of the change, whether the new system of title is to be purely a representative one, vesting, in case of settlement or divided interest, the apparent ownership in trustees, as in the instance of stock, and limiting the record of the title accordingly; or, whether the register is to be opened to the whole beneficial title in the way in which, in a settlement of copyholds, the rolls of the manor more usually develop it.

"The former, however, is that to which preference seems to be ordinarily given; and as the example of stock appears to have suggested the whole scheme, so this example is usually referred to as the evidence of its practicability.

"On the supposition of the adoption of the representative principle, a system of *conveys* is proposed for the protection of the beneficiaries, much on the principle upon which, in the case of stock the law provides the security of a *discharge* against its improper transfer."

Mr. Goodeve then proceeds to notice the distinction between Land and Stock:—

"One cannot but observe, in passing, the distinction lying at the foundation of both, that while the very term 'Land' involves a perpetuity of duration, and, in some hands or other, continuity of ownership, Stock, notwithstanding the permanent inscription in the books of the bank of an equivalent representative for every sum bought or sold, not only is at all time, as regards its individual ownership, evanescent in character, acquired to-day, parted with to-morrow, but loses on almost every occasion of transfer, its whole form and substance, and, with that loss, all power of future identification. A., the holder of 1,000*l.* in consols to-day, transfers it to-morrow to B., who subsequently transfers 500*l.* of it to C. and 500*l.* of it to D., or B., on the occasion of the original transfer to him, has already another 1,000*l.* of consols standing in his name in the bank books: the stock passes, as it were, from hand to hand like any ordinary chattel, and its identity becomes annihilated on each transfer.

"Moreover, the ownership of land presents every variety of modification, and that not unfrequently under a series of limitations, ranging sometimes (though derived under a single instrument) in point of actual duration over a century, and capable of even a longer extension. On the other hand, in the case of stock, even when forming the subject of settlement, the extent of that settlement is usually the mere gift of life interests to individuals in being at the time of its creation: say, for instance, parents with a limitation over in remainder, among some particular class, living at the expiration of the life interest, *ex. gr.* children, and the whole fund becomes distributable and

vanishes accordingly, as a subject of settlement, with the attainment of majority by the remainder-men.

"In the instance of stock, too, names and figures are sufficient to represent the subject of ownership, and millions pass with no greater difficulty than hundreds under the title A. B., of, &c., £ s. d.: and by the substitution in the bank books of the sum represented by these figures, or any part of it, of C. D., of, &c., for the A. B. But this is for the simple reason that the *whole* public debt or stock, the portion of which is the subject of dealing, is but a larger aggregate of £ s. & d. And in every transfer of stock accordingly *quantum* and not *particulars*, in other words *proportion* to an aggregate and not the detail of the proportion, is all that need be specified. In the disposition therefore of any portion of stock, be the sum small or be it large, any figure of £ s. & d. represents the operation. In the case of land, however, the transfer is not one of a proportionate amount to the whole soil of the kingdom, which, to make the analogy complete, it ought to be, but of some specific allotment, and in some defined locality. From the very nature of things, therefore, no such general representative as that which exists in the case of stock, in the instance of £ s. & d. would be applicable.

"The original debt of which the present stock is but the representative or continuation, having been contracted in favour of those ascertained individuals who first subscribed to the loan in respect of which it was created, the bank books started as a record of the respective titles of the subscribers to the several amounts of stock allotted to them in respect of their subscriptions—in other words, as the original title-deed or grant of their stock—and each subsequent transfer in the books has been but one of a series of assignments of the original ownership. To constitute accordingly a public register, discharging, in relation to land, the function discharged by the books of the bank with regard to stock, there would seem to be the preliminary requisite of placing upon the register as well the whole land of the kingdom as its ascertained and authenticated ownership. How this is to be effected originally, or the operation once completed, how the ever varying changes both in the condition of the soil itself, and its ownership (changes almost as frequent and as varied as the ever shifting phases of a cloud scenery), how these are to be got on the register, so as from time to time to connect each changing ownership with the varied form of its subject, will be found a problem of no easy solution, and some observations will be subsequently addressed to it."

The project is designed as a boon to the landowner. The two leading advantages suggested are *economy* and *facility of dealing*. Increased *security* has occasionally been held out as another advantage, but this appears to form but a small part of the boon.



"In fact, it is believed that there is not, under the existing system, substantially any want of security; it is well known that even in a case of wrongful possession the difficulty is rather to dislodge than to defend; and the well known adage is only illustrative of the general safety which prevails in this country in regard to the ownership of its soil, that 'possession is nine-tenths of the law.'

"Of course facility of dealing has only to be looked at in reference to some occasion of *transfer*, and the cost in question is emphatically that attendant on transfer itself, since while the ownership of land is in a *state of rest*, it does not become the subject of law charge at all. In adopting the term '*transfer*,' however, I should explain that I do not intend to restrict its meaning to a complete transmission of the entire interest, but to use it as including every creation of a new or modification of a subsisting ownership. In this sense of the word transfer, in some form or other, the economy in question is to be sought.

"And here it may be permitted to point out that that to which popular discussion on the subject ordinarily addresses itself appears to be but a very partial and imperfect view of what the deliberation ought to comprise.

The prominent grievance put forward for redress is (as the Author observes) the *cost* of transfer, and the impediment to dealing as applied to the case of sale.

"It was mainly to meet this emergency that the existing commission is understood to have been appointed, and judging from the questions circulated by them among certain members of the Profession (and they have done me the honour to include me in the list), it is to the elucidation of this question that the inquiries of the Commissioners appear more specially addressed. That, however, would be but very narrow legislation, particularly in a country in which, like ours, so large a portion of its soil is in settlement, which tried *any* system of transfer by the test of its adaptation to the *exigencies of sale alone*. Suppose it proved to demonstration that, tested by this criterion, some given system could be substituted, with advantage, for the present one, the question would still remain behind, whether a corresponding adaptation of the new system to the purposes of settlement would be such as to justify its adoption. Nay, apart even from the question of settlement, eligibility for the purposes of sale or transfer would be far from conclusive as a ground for the substitution in question, unless it were established that there were no counterbalancing mischief likely to arise while the ownership was in the condition above alluded to under the expression of a '*state of rest*.'"

Mr. Goodeve next observes, that we should bear in mind the position of the whole *land in regard to ownership*, and he thus classifies such ownership:—

"First. Land held in fee simple, in absolute and sole proprietorship, or, what from its convertibility is much the same thing, land, though entailed, the entail in which has become vested in possession.

"And, secondly, land in settlement.

"There is indeed, a third species of ownership so far capable of falling under either classification, that, while partaking of the character of the first in point of perpetuity of interest, and in some instances, capacity of alienation, it virtually rather falls in general analogy under the second, and, assuredly, so on the question of transfer, to which I am now inviting the consideration of your lordship. This is the land held by the various corporations of the country, ecclesiastical, municipal, and, as in the case of the great city and other companies, private; and of this a large part is held in absolute mortmain, as in the instance of the possessions of the Church, of the universities, the public schools, and ordinary charitable endowments."

Mr. Goodeve then states the distinctions between *strict* and *ordinary* settlements.

"'*Strict settlement*,' to take it in its simplest form, may be stated as the creation of a life interest in the head of the family—say the father—subject to pin money in the wife, with, upon the father's death, jointure to her and portions to the younger children, with intermediate provision for the maintenance of the latter out of the interest and advancement out of the capital, and subject to those interests, limitations to the first and other sons in succession for an estate in tail male, or, in default of male issue, tail general, with corresponding limitations in favour of daughters, and like limitations over in favour of collateral branches of the family. Sometimes, and more particularly in noble families (where the object is to annex the estate to the title), a greater preference is given to males by confining the limitations to the male line only. With these, there co-exist powers of leasing, sale, and exchange. Sometimes the settlement is complicated by the existence of previous interests in senior branches of the family, say, for instance, a preceding life estate in a grandfather or jointure in a grandmother, and portions in uncles or aunts; and, superadded to the settlement are powers of charging the estate with specified sums in favour of given individuals, say the parents, or the creation, during the life estate of a father, in favour of a son already born and adult, of an annuity, upon the terms of constituting him the tenant for life only under, and stock of, the settlement.

"'*Ordinary*,' as contradistinguished from '*strict*' settlement, may be taken as that of a limitation to any given individual (say a father) for his life, and possibly either an annuity or a life interest in succession on a mother, with remainder on their death to any other person or class of persons in fee, say, for example, an eldest or only child, or all the children equally,

and on attainment of majority respectively, with intermediate powers of maintenance, and, probably, leasing, sale and exchange."

It would be valuable (says Mr. Good-ve) if it could be ascertained what proportion each of the different classes of ownership adverted to bears to the aggregate holding. Apart from the obvious and more general consideration that the loss or gain of any given system must be more or less in the ratio of the precise extent and variety of the different subject-matters affected by it, it is manifest that the great gain of the change of system proposed being to be sought under the head of transfer, it becomes of the highest importance to ascertain what is the *extent* of transfer to which each classification of the whole land of the country is likely to be exposed.

"Unfortunately there are no statistics capable of affording accurate information on the point. It will be remembered, however, that the possessions of the landed aristocracy are more ordinarily held in settlement, and, most usually so, in strict settlement, and this holding would accordingly almost absorb that portion of the whole soil which falls to the possession of the House of Lords and a large part of that of the House of Commons. In fact, settlement is very much the habit of the people, generally, even of the middle classes, both by way of marriage provision and testamentary disposition, and there can be no doubt that even independently of what may be more appropriately referred to the ownership of the 'landed aristocracy,' a large part of the land of the country, being the property of smaller owners, is in settlement too. The land of the mixed description of ownership above adverted to, that in the holding of corporate bodies, must be of very large amount. Probably the estimate could not be an exaggerated one, which, including corporate possessions, ascribed at least two-thirds of the entire area of the kingdom to a holding in settlement, leaving one-third only to be held in sole and absolute proprietorship."

Having laid this foundation, the Author proceeds to consider *what are the tendencies to alienation of sale, and, consequently, what the occasions for transfer of each of these classifications of property.*

"Now as respects corporation property, with occasional and for the most part insignificant exceptions, a sale rarely if ever takes place. In fact, this species of property seldom exhibits any other modification of the ownership than the granting of leases, or such like transactions, and these leave the ultimate ownership of the land wholly undisturbed. In fact, among corporate bodies more especially, century after century glides by, and the muniment room still contains the musty deeds and charters

which exhibit the title to the original possessions.

"Of property held in more ordinary settlement, it may be proper on this point to distinguish between that held in strict and that held in other settlement.

"Of the former, as regards the inheritance or large ownership, the very principle is inalienability to the utmost allowed by the law. When alienation does take place, it is not the species of alienation for which the change of system is principally proposed, but simply that species of re-settlement which is but a continuity of the old family ownership. In the usual course of things, as each generation succeeds its predecessor, and ordinarily on the occasion of the marriage or attainment of majority of the elder son, the existing settlement is extinguished or remodelled for the purpose of again extending it through another generation, the tenant in tail, and offspring of the stock of to-day being cut down to the tenant for life and stock of the new entail of to-morrow. But so the series goes on, generation after generation, in perpetual succession, until families become exhausted, or some great disturbing cause arrives, and the instances are not few, and particularly among the noble families of the country, of a perpetuation of the ownership in the same family almost for centuries. The result is that transfer, in the more ordinary sense of the word, of property held in strict settlement during the existence of the settlement, is comparatively of small extent. When the settlement becomes exhausted, although not until then, the property, its original subject, ranges itself under the head of property held in fee simple.

"I do not wish to withdraw from observation that transfer is in some degree, the incident, even during the existence of the settlement, of property held under this form of proprietorship, and the instances of the exercise of powers of sale and exchange, and powers of charging, with gross sums of money, either by way of portions for younger children, or for the benefit of the owner of some limited estate, say for example, a tenant for life, will immediately occur to the mind.

"Sales or exchanges, however, under powers of this description, are, relatively to the whole land, the subject of the settlement generally, but of insignificant amount. They address themselves ordinarily to specific,—usually outlaying portions of the aggregate estate, and, in the language of Lord Eldon, require 'strong circumstances of family prudence' to justify their exercise. (*Mortlock v. Buller*, 10 Ves. 308.)

"Portions and other like charges will require to be raised, and so far, in one sense of the word, involve transfer. But these, of course, exist in a proportion relatively small only to the whole estate itself, the subject of charge or settlement, and ordinarily involve no further transfer than a mortgage.

"Of property held in ordinary settlement the tendency to become a subject of transfer is na-

turally much larger than of that which is held in strict settlement; and, on the question of transfer, property held in ordinary settlement bears, perhaps, a nearer approximation in its circumstances to a case of absolute ownership, than to one of settlement. In fact, at the expiration of the particular interest, say, probably, that of some antecedent tenancy for life, and the attainment of majority by the remaindermen, when the settlement itself virtually ends, land held in ordinary settlement resolves itself altogether, save in the article of subdivision, into land of which the ownership is absolute. On the whole, however, so long as the settlement lasts, there is, in this species of holding, less tendency to transfer than under an absolute proprietorship.

"It seems to follow that, applying the system proposed to the occasions of transfer of the nature of sale, its benefits, in the main, would have to be sought in reference to the land held in absolute and unrestricted ownership, or in the proportion of approximation to it, and would diminish in the ratio in which the holding approaches either to property held for corporate interests, or under a condition of strict settlement."

With these data the Author proceeds to investigate what are the occasions of transfer, and what is the extent of cost in relation to them under the present system. The result, he says, will aid in ascertaining what, in the system for which the present is proposed to be changed, is the tendency either to abridgment of that cost or to the affording of increased facilities of transfer.

Using "transfer" in the broader sense adverted to above, that is, as embracing every dealing effecting a new modification of the ownership, *the occasion of transfer will be found to range within one of two leading classes.*

"1. *Settlement*.—Including under the head testamentary disposition and the exercise of powers created by the instrument of settlement; and,

"2. *Sale*.—Including mortgage in the term.

"There may be, indeed, occasional instances in which a certain species of transfer may be requisite, and cost may be incurred in respect of it, without substantial change in the ownership, as, for example, the appointment of new trustees, the granting of leases, the bankruptcy or insolvency of an existing owner, and so forth; but it is not necessary to make these a subject of distinct division, or separate consideration.

"Whether it would be so under the new system remains to be seen. At present, mere devolution, whether by the death intestate of an ancestor, or the termination of preceding interests, now creates no occasion for any specific act of transfer, and involves no cost. The mere act of taking possession is the completion of the title, and this is done wholly irrespective of legal assurance of legal cost."

The points for discussion thus suggested as relating to both cost and facility of dealing, Mr. Goodeve contends,—making allowance for those sudden or urgent occasions of sale which brook no delay,—the whole question does, in the main, practically resolve itself into but one question—the *question of cost*.

"Doubtless, there may be instances in which, for some unexpected purpose, it might be convenient to the owner of land to *rust with it into the market*, and if the production of some registration 'Scrip' enabled him to accomplish the sale, it is possible that this might be effected with greater facility than it could under the present system. Even, in the case put however, *some* delay would be likely to take place before the transaction could be finally perfected, and, as matters now stand, what would there be to prevent a *bond fide* owner from entering into any contract of sale however hurried, beyond the natural preventative of the case, that buyers are not ordinarily found for land in such sudden emergencies. In truth, though I have made the exception for the sake of theoretical accuracy, it may be conjectured that the instances would be too few here to require consideration.

"On the other hand, it will be familiar to those conversant with such matters, that in any ordinary case of sale, the delay in its ultimate completion not unfrequently lies at the door, not of the vendor but of the purchaser, and this, perhaps, notwithstanding a penalty of a 5l. per cent. interest to which the condition of his purchase exposes him."

*Treating then, Costs, as arising under one or other of the two heads, Settlement or Sale, Mr. Goodeve inquires of what the elements of cost under each head consist.*

"And here it should be observed that, of cost itself, the component parts will be found, in the main, ranging under one or two heads, or the combination more or less of both of them, and these are, 1st, the costs of the investigation into and establishment of the title of the party proposing to transfer itself, including as part of the latter, those accompanying matters of cost which occasionally present themselves, as, for instance, collateral covenants for the production of title-deeds and the like."

Here we must pause for the present, and shall in the next or an early Number enter on the question of the *saving of expense* by the proposed Register of Titles.

## POWER OVER JUDGMENT DEBTOR'S ASSETS.

AMONGST the various works on the Common Law Procedure Act, 1854, is one

by Mr. Philips, the Special Pleader,<sup>1</sup> who has appended to several of the Sections a concise and useful commentary. We select, for the present, his notes on that part of the Act which authorises the examination of a judgment debtor as to the debts due to him (s. 60), and enables a judge to order an attachment on such debts (s. 61). After stating these two sections, Mr. Philips remarks that

"Foreign attachment has long been one of the most important customs of the city of London. The principle is derived from the civil law, and the object of the proceeding has been briefly described to be 'to enable the creditor to attach the money, debts, or goods of his debtor in the hands of a third person, and so deprive the owner of all control over the subject of the attachment until he appears to answer the claims of his creditor, or until the debt is satisfied.' *Locke on Foreign Attachments*, p. 2. The present enactment, however, though no doubt suggested by the custom of foreign attachment, makes no reference to it, or to the rules of any court in which the principle of it has been adopted, but simply presents a new mode, complete in itself, of enforcing satisfaction of judgments, in addition to the modes of execution at present possessed by the Superior Courts of Common Law. This proceeding by attachment is given only to creditors who have obtained judgment, and only against debts due to the debtors on such judgments; the debt in respect of which the order to attach is made being bound in the hands of the garnishee by the service of such order, or notice of it as directed, and payment by the garnishee to the judgment creditor being made enforceable by the proceedings detailed in the sections that follow."

On the 62nd section Mr. Philips observes that the words "Debts due or accruing to the judgment debtor," comprise ascertained debts presently payable or becoming payable, and he refers to *Shelton v. Mott*, 6 Exch. 231, where the words "due or growing due" were held to include a debt though not then payable. In that part of the 62nd section which enacts that the Judge's order "shall bind such debts in his hands," Mr. Philips says,

"The word 'bind,' as used in the statute 29 Car. 2, c. 3, s. 16, with reference to the writ of *f. fa.*, and its delivery to the sheriff, relates to the debtor himself, so as to vacate any intermediate assignment made by him otherwise than in market overt; but the delivery of the writ to the sheriff does not change the property in the goods. See *per Patteson, J.*, in *Giles v. Grover*, 1 Cl. & Fin. 74, *et seq.*; 9 Bing. 136, 137. The attachment under the above section, when effected by service or

notice of the order, as therein directed, will deprive the debtor of any power of dealing with the debt attached, so as to defeat the right of the judgment creditor, and will render a payment to the debtor by the garnishee invalid. In bankruptcy, setting apart questions of fraudulent preference, collusion, and procurement, the attachment, if it be made prior to any act of bankruptcy, will, in case of a fiat issuing against the judgment debtor after such attachment, but before payment is enforced from the garnishee, bind the debt notwithstanding the fiat; but it will be otherwise where there is an act of bankruptcy prior to the attachment, although the judgment creditor has no notice of it, inasmuch as the title of the assignees by relation will then prevail, there being no provision that such attachment shall in that case be valid. Though the Bankrupt Law Consolidation Act, 1849, contains many provisions to protect *bond fide* transactions from the operation of the doctrine of title by relation, there are none that appear capable of being applied to an attachment under this section before payment is enforced against the garnishee; s. 133 of that Act renders valid, notwithstanding any prior act of bankruptcy, 'all executions and attachments against the goods and chattels of any bankrupt *bond fide* executed and levied by *seizure and sale* before the date of the fiat or the filing of such petition;' so that, even assuming, for the purpose of these observations, that a debt due to the bankrupt would be included in the expression 'goods and chattels,' as here used, the attachment does not, in the case referred to, come within the protection of the clause, so as to bind the debt. It is scarcely necessary to observe, that the clause would apply precisely to the case of an execution against the garnishee becoming bankrupt, made and levied by *seizure and sale* before the fiat.

"The case of insolvency stands on a different footing. The insolvency laws do not, as is well known, adopt the principle of title by relation, though certain transactions prior to the vesting order under 1 & 2 Vict. c. 110, or the petition under the protection acts, are invalidated by express provisions directed against them; for example, the provisions in those statutes as to voluntary preference, and as to executions on warrants of attorney, as to bills of sale, &c. There is nothing, however, in the Insolvency Acts above referred to, to invalidate the effect of an attachment obtained by a judgment creditor under this present statute, if made at any time prior to the vesting order under 1 & 2 Vict. c. 110, or the petition under the Protection Acts.

"In *Woodland v. Fuller*, 11 Ad. & Ell. 859, on a judgment against T., there had been a *f. fa.* issued and lodged with the deputy (under stat. 3 & 4 Will. 4, c. 42, s. 20), of the sheriff, and a warrant issued by the deputy, and afterwards, on the same day, a vesting order under 1 & 2 Vict. c. 110, made, transferring the estate of T., under which the assignee took possession of T.'s property, which was after-

<sup>1</sup> Published by Wm. G. Benning and Co.

wards seized by the sheriff's officer, and it was held that the seizure was proper. It was contended, on behalf of the assignee, that the vesting order was equivalent to a sale in market overt, but the Court decided otherwise; and *Patteson, J.*, after stating that the delivery to the deputy was a delivery to the sheriff, said, 'that, however, does not change the property, nor, indeed, does the seizure do so (*Giles v. Grover*); but the delivery does bind it, so that, into whosoever hands it comes afterwards, it is liable to be seized under the writ; the debtor may convey it away, but not so as to defeat the right of the execution creditor.' And as to the argument as to sale in market overt, the same learned Judge observed that the statute, *i. e.* the Insolvent Debtors' Act, merely said that the order should have the effect of vesting, without carrying the transaction beyond the conveyance under the former Insolvent Debtors' Act, that it got rid of no charge."

### LAW OF ATTORNEYS.

#### TAXATION OF BILL OF COSTS FOR BUSINESS IN THE REGISTRATION COURTS.

A solicitor was employed in respect of some election matters, and delivered his bill of costs, whereupon the client obtained an order of course for its taxation, alleging that it did not contain any item for business done in either of the courts of law or equity. The bill contained an item for attending and conducting the registration for the Lincoln district of the part of Lindsey. On a motion to discharge the order, the *Master of the Rolls* said,—“I am of opinion that the court has jurisdiction to order the taxation of this bill. The Statute says, ‘that in case no part of such business shall have been transacted in any court of law or equity,’ the Lord Chancellor or the Master of the Rolls may order the taxation of a bills.

“The only question is, whether, on the construction put on those words, the business mentioned in this case comes within the definition ‘business transacted in a court of law.’

“The first thing which strikes me, as it did Lord Lyndhurst in *re Gaiskell*, Phill. 576, was the generality of these words, ‘business transacted in any court of law or equity.’ Lord Lyndhurst says, ‘it appears that these words are borrowed from the Statute of Geo. 2, where they have been repeatedly the subject of judicial decision; and the doctrine of all the cases is, that to come within the meaning of those words, the business must be some proceeding either in a suit or with a view to a suit.’ This is the key to the construction.

“The question here is, whether the items which are here stated,—‘attending to the registration of Lincolnshire in the year 1837,’—is a proceeding within a suit, or with a view to the suit, in a Court of Law or Equity? That is the question I have to consider in this case.

“I am of opinion, though I do not know whether it is necessary to come to a conclusion, that the Registration Court is not a Court of Law or Equity within the Statute. I concur in an observation of Mr. Palmer, that the mere fact of calling it a court, does not make it a Court of Law or Equity. It is a court of registration; its object is not to determine rights between contending parties, but the rights of persons to exercise high constitutional functions, and to ascertain who are entitled to exercise these rights; and although many nice questions may arise, and although the rights as between parties may have, incidentally, to be determined by the revising barrister, still there is no suit or action between parties, though one person claims a vote and another objects to it. The whole object is, to perfect and make accurate the list of persons qualified to exercise the functions of voters. It is easy to illustrate it thus:—In the court of common council or of aldermen a question might arise, in which it might be necessary to employ a solicitor, but that would not make them Courts of Law or Equity within the Statute.

“I am strengthened in this by the fact, that there is no observation which has been made as regards the Registration Courts, which would not equally apply to the Court of Bankruptcy, and yet the Act specified proceedings in bankruptcy or lunacy, which would be unnecessary if they were Courts of Law or Equity. Even if Registration Courts were considered Courts of Law, still it would be difficult to hold, that the objecting to a vote, or the defending the right to be on the list of voters, on behalf of a candidate, would be a proceeding either in a suit or with a view to a suit on his part. I cannot distinguish this from the employment of a solicitor to go into Court and take a note of the proceedings in which the employer might be materially interested, and might consider of importance to him, but to which he was no party. That would not be a proceeding, either in a suit or with a view to a suit. In that view, it is impossible to say, that this is a proceeding in a court of law or equity within the meaning of the Statute. It is said that the Bill ought to be taxed at law, but this is merely

saying that it is taxable by a different officer, on the same principles; and it is admitted that there is no taxing officer in the Registration Court.

"I was struck with the observation, that the Bill delivered was not in a form fit for taxation; and although I must refuse this application with costs, it must be without prejudice to the right of Mr. Andrews to present a petition for leave to amend the Bill delivered by him." *In re Andrews*, 17 Beav. 510.

## LAW OF COSTS.

### OF TRUSTEE APPOINTED PENDENTE LITE.

PENDING a suit to remove the surviving trustee of a will, on the ground of misconduct, and for the appointment of a new trustee in his stead, such trustees appointed Mr. Rigby a trustee under a power vested in him, and the new trustee was afterwards made a party to the suit. Mr. Rigby, who did not object, was removed at the hearing together with the defendant.

The *Master of the Rolls* said—"I can neither give nor make Rigby pay costs. A gentleman before being appointed trustee is informed that the persons beneficially entitled to the trust property have had a correspondence with the existing trustee, and that they assert that the trust funds have been misapplied. He also knows that the surviving trustee was about to leave the country for a considerable time, and that the *cestuis que trust* charge him with a misapplication of the estate, and knowing this, he consents to become a trustee without any communication with the *cestuis que trust*."

"I think that a person thrusting himself, as it were, into a trust, was bound to inquire into the existing circumstances; and though I am always disposed to give trustees their costs, considering the arduous and important duties they have to perform, I think that a party acting in this manner is not entitled to any costs." *Peatfield v. Beaz*, 17 Beav. 522.

## BARRISTERS CALLED.

*Michaelmas Term*, 1854.

LINCOLN'S INN.

Nov. 17.

Alexander Edward Miller, Esq., B.A.  
John Westlake, Esq., M.A.  
Herbert Coleridge, Esq.  
Charles Piffard, Esq., B.A.

James Cottingham, Esq.  
Charles Parker Butt, Esq.  
Leonard Stewart, Esq.  
Charles Wethered Willett, Esq., M.A.  
Charles John Hill, Esq., B.A.  
James Drummond Griffith, Esq., B.A.  
Joseph Robert Monkhouse, Esq., B.A.  
Graham Hastings, Esq., B.A.  
Francis Rowden, Esq., B.A.  
Charles Plummer, Esq., B.A.  
Joseph Dacre, Esq., M.A.

### INNER TEMPLE.

Nov. 17.

Mountstuart Elphinstone Grant Duff, Esq., M.A.

Hans William Sotheby, Esq., B.A.  
Henry Latham, Esq., B.A.  
Charles North, Esq., B.A.  
John Dawson Mayne, Esq.  
Thomas Joseph Torr, Esq., B.A.  
William Bachelor Coltman, Esq.  
George Moubray Sutherland, Esq.  
Charles James Watkin Williams, Esq.  
Henry Bruce Arnaud, Esq.

### MIDDLE TEMPLE.

Nov. 17.

Michael Maxwell Philip, Esq.  
John Dunbar, Esq., B.A.  
Hamilton Charles Palmer, Esq., LL.B.  
Richard Greene, Esq., B.A.  
Michael Angelo Garvey, Esq., LL.B.  
Ralph Walters, Esq.

### GRAY'S INN.

Nov. 17.

Robert Baker Jones, Esq.

## SELECTIONS FROM CORRESPONDENCE.

### LAW PARTNERSHIP.—REMEDY FOR WANT OF ACCOUNT.

*A.* and *B.* were partners in the law under written articles. The partnership was dissolved nine years ago by the usual notice in the *Gazette*. *A.* was to receive and pay all debts. The parties mutually "engaged" by an agreement in writing contemporaneous with the dissolution, to deliver an account to the other of all moneys received, and to pay over to *A.* the amount receivable by him. *B.*, notwithstanding repeated demands and notices in writing from *A.*, refuses to deliver any account, although it can be proved that he has received many large sums on account of the firm, but above six years ago.

Has *A.*, notwithstanding the lapse of time, a remedy against *B.*? and should it be by action of account, so as to apply for a compulsory reference under the recent regulations, or by a bill or claim in Equity, or would an

application to the Court of Queen's Bench be desirable to compel B., as an attorney, to perform his engagement? A

December 21, 1854.

#### LAND AGENTS.

A good and honourable land agent is a most important person in the management of landed property. I wish to learn from your more experienced correspondents what is the practice of delivering up documents, vouchers, and papers when the land agent ceases to be such or dies.

I have heard of recent instances—one where the whole of the agency papers were burnt or destroyed by the agent, and in another case where, although a small part was delivered up, yet vouchers of settled accounts and the whole of the other papers were detained.

This is a most important subject, the more it is considered, for landed proprietors,—many do not keep copies. A BARRISTER.

#### PROFESSIONAL LISTS.

##### PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recoveries' Act, with dates when gazetted.*

Cochrane, William, Grantham, in and for the Borough and Stoke of Grantham, with its limits in the county of Lincoln, also in and for the parts of Kesteven in the same county. Dec. 19.

Curtis, Harry Porter, Romsey, in and for the county of Hants.

Haines, George James, Parrington, in and for the county of Berks. Dec. 22.

Welsby, William, Ormskirk, in and for the county of Lancaster. Nov. 21.

##### COUNTRY COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

*Appointed under the 16 & 17 Vict. c. 78, with dates when gazetted.*

Davis, Edward Marsh, Ross. Dec. 5.

Houchen, John, jun., Thetford. Dec. 1.

##### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 21st Nov. to 22nd December, 1854, both inclusive, with dates when gazetted.*

Clough, Thomas William, and Alfred Bantoft, Huddersfield, Attorneys and Solicitors, Dec. 1.

Rogerson, Thomas, and John Radcliffe, Liverpool, Attorneys and Solicitors. Dec. 5.

Rolt, Frederick, and Charles Etherington, 4, Skinner's Place, Sise Lane, Attorneys, Solicitors, and Conveyancers. Dec. 1.

Skerratt, James, and Joseph Remer, Sandback, Attorneys and Solicitors. Nov. 21.

Vardy, William Stoughton, and James Frederick Delmar, 7, Finsbury Square, Attorneys, Solicitors, and Conveyancers. Nov. 24.

Wright, Newenham Charles, and John Keep Weedon, 4, Furnival's Inn, Holborn, Attorneys, Solicitors, and Conveyancers. Dec. 22.

#### POST-OFFICE REGULATIONS.

##### MONEY ORDERS.

1. On and after the 1st of January next, the rule requiring the payment of an additional commission for a duplicate money order, or for a transfer from one office to another, &c., will be extended to cases of alteration in the name of the remitter or payee.

2. The payment of the additional commission, viz. 3d. on all sums not exceeding 2l., and 6d. on all sums between 2l. and 5l. must be invariably made by postage stamps transmitted with the application; and unless the amount be so transmitted, the application will not be complied with.

3. All applications upon this subject must be addressed to the Controller of the London, Dublin, or Edinburgh Money Order Office, according as the order was issued in England (or Wales), Ireland, or Scotland.

4. The errors which often make alterations in money orders necessary may be avoided by the use of the printed forms of application which are sold at all Money Order Offices at the rate of five for one halfpenny, and by the applicant always examining his order before quitting the issuing office.

(Signed) ROWLAND HILL, Sec.

December, 1854.

#### NOTES OF THE WEEK.

##### INCONVENIENCE OF THE CITY COURTS OF JUSTICE.

DURING the progress of the cause of *Parnell v. Goater*, on the 21st December, at Guildhall, Lord Campbell frequently complained of the noise, and directed that a door leading into the body of the Court might be kept closed. The order not having been obeyed, his lordship directed that the usher who had charge of the door should be brought before him. He was accordingly sent for, but it appeared he was not to be found at his post.

Lord Campbell.—“The manner in which these Courts are kept is disgraceful. Amongst other reforms there must be a reform in the Courts, or I will adjourn the sittings to the other end of the town. It is the duty of the city to provide proper attendants to preserve order and keep persons in their proper places. For myself, I will say, I do not care if the Courts are removed from the city altogether, and I shall certainly make that proposal.—From *The Daily News*, 22nd December, 1854.

##### NEW MEMBERS OF PARLIAMENT.

William Stuart, jun., Esq., for Bedford, in the room of Henry Stuart, Esq., deceased.  
Sir Joseph Paxton, Knight, for Coventry, in the room of Charles Geach, Esq., deceased.

**Joseph Haythorne Reed, Esq.**, for Abingdon, in the room of Montagu Bertie, Esq. (commonly called Lord Norreys), now Earl of Abingdon, summoned to the House of Peers.

**Robert Stayner Holford, Esq.**, for the Eastern Division of the county of Gloucester, in the room of Sir Michael Hicks Beach, Bart., deceased.

**Hugh Fortescue, Esq.**, commonly called **Viscount Ebrington**, for Marylebone, in the room of Dudley Coutts Stuart, Esq., commonly called Lord Dudley Coutts Stuart, deceased.

# LAW APPOINTMENTS.

**Mr. Crawford**, the present Solicitor-General for Scotland, will be appointed to the vacant seat upon the Bench caused by the death of Lord Rutherford. There being at present an Earl of Crawford, he will therefore take his seat as Lord *Ardmillan*.

**Thomas Makensie, Esq.**, the Sheriff of Ross, obtains, with the full satisfaction of the Profession, the gown of Solicitor-General.

**Mr. Philip Smith Sparing**, of Colchester, has been appointed Clerk to the Burial Board of St. Osyth, Essex.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Master of the Rolls.

**Earle v. Ferris.** Nov. 13, 1854.

SUIT BY HUSBAND CLAIMING PROPERTY PURCHASED BY WIFE.—PARTIES.

*Held, that the wife is not a necessary party to a suit by a husband against her trustee for a declaration that certain property, which she had purchased, and had had conveyed in trust for herself, was held by the trustee in trust for himself: and a demurrer on her behalf was allowed, where she was a defendant.*

THIS bill was filed by the plaintiff against his wife and her trustee, for a declaration that certain property, which she had purchased out of her savings, and had had conveyed in trust for herself, was held by the trustee in trust for the plaintiff.

**Palmer and Batten** appeared in support of a demurrer by the wife.

**Sandys** for the plaintiff, contra.

The Master of the Rolls said, that in accordance with **Davis v. Prout**, 7 Beav. 288, the demurrer must be allowed, as a wife could only be made a defendant to a suit by her husband in respect of her separate estate.

**Millar v. Chapman.** Dec. 4, 1854.

WILL.—CONSTRUCTION.—“OR.”—SUBSTITUTIONAL DEVISE.

*A testator, by his will, devised certain property, to which he was entitled upon the death of a tenant for life, to trustees in trust to convert the same and to divide the proceeds equally between his children living at the death of the tenant for life, or such others as would have been entitled at the death of their parents: Held, upon the death of the tenant for life after the testator, that the children then living were entitled only, and to the exclusion of a grandchild whose father pre-deceased the tenant for life, although he survived the testator.*

THE testator, by his will, dated in July, 1815, devised certain property, to which he was entitled upon the death of a tenant for life, to trustees in trust to convert the same and to di-

vide the proceeds equally between his children living at the death of the tenant for life, or such others as would have been entitled at the death of their parents. It appeared at the death of the tenant for life, who survived the testator, that there were two children (the present plaintiffs) surviving, and a grandson (the defendant) whose father survived the testator but predeceased the tenant for life.

**Palmer and Surrage** for the plaintiffs; **Follett and De Gea** for the defendant.

The Master of the Rolls said, that the word “or” was substitutional, and the gift only operated on the testator surviving the tenant for life, and the defendant was not therefore entitled.

### Vice-Chancellor Kindersley.

**Jenkins v. Bryant.** Nov. 9, 1854.

ORDER OF COURSE TO CHANGE SOLICITOR—DISCHARGE—SUPPRESSIO VERI.

*An order was obtained at the Rolls as of course to change the solicitor on the record: upon its appearing that there was a special agreement, which had not been stated on the order being obtained, it was discharged with costs.*

THIS was a motion to discharge an order, which had been obtained as of course at the Rolls, to change solicitors in this case. It appeared that there was a special agreement which had not been stated on the order being obtained.

**Glasse and Bennett** in support, **Toller** contra.

The Vice-Chancellor said, that a special order should have been obtained, and discharged the order of course with costs.

**Jenkins v. Vaughan.** Dec. 7, 1854.

SUBPENA TO HEAR JUDGMENT.—SUBSTITUTED SERVICE ON DEFENDANT'S SOLICITORS.

*Leave given to substitute service of the subpoena to hear judgment on a defendant, whose solicitors had, by leave of the Court,*



been served with the copy bill, and where, on their not appearing, the plaintiff had entered an appearance and no answer had been put in.

THIS was a motion for leave to substitute the service of the subpoena to hear judgment on a defendant, whose solicitors had, by leave of the Court, been served with the copy bill, and on their not appearing, the plaintiff had obtained leave to enter an appearance, but no answer was put in.

W. W. Cooper, in support, referred to the 15 & 16 Vict. c. 86, s. 26, which enacts, that "in suits in the said Court commenced by bill, where notice of motion for a decree or decretal order shall not have been given, or having been given where a decree or decretal order shall not have been made thereon, issue shall be joined by filing a replication in the form or to the effect of the replication now in use in the said Court; and where a defendant shall not have been required to answer and shall not have answered the plaintiff's bill, he shall be considered to have traversed the case made by the bill," and to the 28th Order of August 7, 1852, directing that, "where a defendant shall not have been required to answer, and shall not have answered the plaintiff's bill, so that under the 15 & 16 Vict. c. 86, s. 26, he is to be considered as having traversed the case made by the bill, issue is nevertheless to be joined by filing a replication in the form or to the effect of the replication now in use."

The Vice-Chancellor made the order as asked, in accordance with *Barton v. Whitcomb*, 23 Law J., N.S., Ch. 523.

#### Vice-Chancellor Stuart.

*Barford v. Barford.* Nov. 15, 1854.

CLAIM FOR SPECIFIC PERFORMANCE OF AGREEMENT TO SELL REAL ESTATE.—SIGNATURE OF COUNSEL.

Held that the signature of counsel is not necessary to a claim to enforce the specific performance of an agreement for the sale of real estate.

It appeared on this claim coming on for hearing, and which was filed to enforce the specific performance of an agreement for the sale of real estate, that it had not been signed, although prepared by counsel.

R. Vansittart Neale, in support, referred to 1st order of April 22, 1850, section 8.<sup>1</sup>

The Vice-Chancellor held, that the signature of counsel was unnecessary.

<sup>1</sup> Which directs that "any person seeking equitable relief may, without special leave of the Court, and instead of proceeding by bill of complaint in the usual form, file, or claim in the Record and Writ Clerks' Office," "in any case where the plaintiff is or claims to be" "a person entitled to the specific performance of an agreement for the sale or purchase of any property, seeking such specific performance."

#### Court of Queen's Bench.

*Gurney and others v. Womersley.* Nov. 13, 1854.

COMMON LAW PROCEDURE ACT, 1854.—APPEAL FROM REFUSAL OF RULE NISI.

The Court refused a rule nisi to set aside the verdict for the plaintiffs and to enter a nonsuit, upon a point of law, which was well established, and it appeared that none of the Court entertained any doubt on the refusal of the rule: Held, that an appeal would not be granted under the 17 & 18 Vict. c. 125, s. 35, and that it was in the discretion of the Court to refuse the appeal.

THIS was an application under the 17 & 18 Vict. c. 125, s. 35,<sup>1</sup> for leave to appeal from the decision of this Court refusing a rule nisi to set aside the verdict for the plaintiffs and enter a nonsuit (reported *ante*, p. 39).

Brammell in support. Cur. ad. vult.

The Court said, that where there was sufficient doubt expressed by any Judge, the appeal was a matter of right, but otherwise it was discretionary. If the point had been new, an appeal would have been allowed, although the Court had been unanimous, but as this was not the case, the application must be refused.

#### Court of Common Pleas.

*Goatley v. Emmott.* Nov. 14, 1854.

SECURITY FOR COSTS—ACTION BY INSOLVENT AFTER ASSIGNMENT OF DEBT.

A Judge's order was obtained in an action by an attorney to recover the amount of his bill of costs, on him to find security for costs on the ground of his insolvency and assignment of the debt: A rule was refused to set aside the order.

THIS was a motion for a rule nisi to set aside an order of Crowder, J., calling on the plaintiff, who was an attorney, to give security for costs in this action to recover the amount of his bill of costs, on the ground he was insolvent and had assigned the debt.

F. D. M. Dawson in support.

The Court said, that in accordance with the recent decision of *Perkins v. Adcock*, 15 Law J., N.S., Exch. 7, the application must be refused, although some of the older cases might be inconsistent with the latter case.

<sup>1</sup> Which enacts, that "in all cases of motions for a new trial upon the ground that the Judge has not ruled according to law, if the rule to show cause be refused, or if granted be then discharged or made absolute, the party decided against may appeal, provided any one of the Judges dissent from the rule being refused, or when granted being discharged or made absolute, as the case may be, or provided the Court in its discretion think fit that an appeal should be allowed; provided that where the application for a new trial is upon matter of discretion only, as on the ground that the verdict was against the weight of evidence or otherwise, no such appeal shall be allowed."

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—"Still attorneyed at your service."—*Shakespeare.*

SATURDAY, JANUARY 6, 1855.

### REGISTRATION OF TITLES.

ONE of the most important questions now under the consideration of the members of the Profession, in both its branches, is that of the Registration of the Title to landed Property.

It was truly stated in the Petition of the Incorporated Law Society in 1851, that "the subject of a General Registration of Assurances has occupied, at intervals, the attention of some of the greatest minds that ever adorned the Bench or Bar of this country, from the time of Lord Bacon to the present day, but hitherto no scheme has been suggested which was not open to insuperable objections."

It seems now to be generally acknowledged that it is impossible to frame a safe and satisfactory scheme for the registration of all deeds and instruments relating to land. The advocates of a General Register appear to have given up that comprehensive design as altogether impracticable, and turned their attention to a mere register of the holder of the legal estate, after the manner of the stockholder in the Government Funds.

The proposed reform of the Law is now avowedly directed to the diminution of the expense of all dealings and transactions with landed property. The complaint is that the costs of investigating a title to, and completing the conveyance of, an estate constitute a grievous and unnecessary burden upon land, which ought to be diminished.

The new plan for effecting this object is simple and ingenious. Instead of entering on the Register every deed in any way affecting the title to the property:—wills, settlements, trusts, rent-charges, mortgages, equitable as well as legal, contracts, and

every species of incumbrance,—one single deed conveying the fee simple will alone be entered. If trustees be appointed in whom the parties beneficially interested have full confidence, no caveat, distringas, or inhibition need be entered on the register. A mortgagee would, of course, be advised to lodge an inhibition, but the entry would be short. The deed effecting the incumbrance would be produced to the Registrar and marked.

In a large class of instances, however, though the entries would be concise, they would be as numerous as they are now, for parties entitled in reversion or remainder who had not the same confidence in the trustees as the tenants for life, would probably avail themselves of the right of entering their claims on the register; and wherever a sale or mortgage took place by the reversioner, an inhibition would, of course, be entered.

In all these cases we must assume there would be no mistake in making the proper entry, nor in due notice being given in case any application should be made to create another charge on, or to dispose of, the property. Great care will, of course, be requisite in giving and proving the proper notices before the charge on the register could be removed.

There can be no doubt that several of the objections which were urged against a General Register of Deeds, are avoided by the new plan. The parties will be enabled to keep possession of their own deeds, declaring the trusts on which the legal estate is held, and the family arrangements and pecuniary transactions of the parties will not be exposed to interested opponents or idle curiosity.

Looking, however, at the vast magnitude

of many of our cities and towns, and the increasing activity of every part of the empire,—at the unceasing and rapid changes which are taking place in the freehold, but especially in the leasehold property of the country,—the difficulties of a Register of the transactions in land have increased a hundred-fold since the project of a General Register was first contemplated.

It has been urged by several practitioners that after the Commissioners have examined such witnesses as they think proper, and after obtaining answers to the questions they issued in the Long Vacation, a detailed plan of the proposed mode of operation should be published for the consideration of the Profession. The questions which have been issued seem indeed to be preliminary to the formation of a plan. A general impression may prevail that a Register would be beneficial, at a future period, if not at present; but to judge of its practicability the whole scheme should be developed,—the forms of registration, the mode of entry of the original deed, the inhibitions, certificates of registry, notices, and in short all the machinery by which it is supposed the plan would work practically and beneficially,—should be laid before the public. Difficulties and objections might then be seen, which do not at present occur to any one, and means might perhaps be devised for removing obstacles.

The proposition of a General Register, until the issuing of the present Commission, was supported in a great degree on the ground of *security* to the purchaser against fraud by the suppression of deeds of incumbrance, and of security to the owners of estates against the loss of deeds, and further by rendering covenants unnecessary for the production of deeds which were on the Register. These supposed advantages are now abandoned. The instances of injury by the suppression or loss of deeds have been found so exceedingly rare, and probably smaller in number than other losses which would inevitably arise under any new system, from neglect, mistake, or fraud, that the argument of increased security is relinquished, and the whole question depends on the anticipation of establishing a *cheaper* system than the present. If this anticipation should not be realised, there would be an end to the controversy.

We have therefore looked, with no small interest, into the estimates which have been formed of the expense of registration as now proposed, and the time which must elapse before the experiment can be suffi-

ciently tried. On this part of the subject, Mr. Goodeve (whose pamphlet we noticed last week) investigates—1st, the cost of the *settlements* of property; and, 2nd, of the *sale* of property. For the present we shall confine our attention to the first head, especially as it is estimated that two-thirds of the landed property of the kingdom is held under deeds of trust and settlement and are seldom brought into the market for sale.

Mr. Goodeve observes, that the register must be based on one of two principles. Either it must develop the interest of the beneficiaries, or it must vest the property in representatives of the ownership as trustees for the benefit of the real owners, leaving that ownership to be developed by contemporaneous documents. On the first hypothesis, the knowledge in question is certainly not likely to be obtained at *less cost* through the medium of a registry than that of a deed.

“To be sure if the proposed settlor be in fact the absolute owner of the property, and the theory be, that in the absence of anything to the contrary apparent on the face of the register, the party registered is to be taken as the owner, a mere inspection of the register would be sufficient to show the interest; but here the difficulty arises, if a registered ownership may be a fiduciary one, how is a mere inspection to determine whether the *apparent* be or be not the *actual* owner, a consideration which appears to strike at the very root of the *capacity* of a register to form in such cases any test of title at all.

“Let this difficulty, however, be surmounted, still even in the case of a party registered being at the same time the sole and absolute owner, the whole difference in *cost* between the present system and its proposed substitute would be the difference between the cost of the attendance and search at the registry office, including, perhaps, the official certificate of the registrar (and judging from the analogy of wills deposited at Doctors’ Commons, the latter and not the former would be the natural cost), and the cost of a copy or abstract of the instrument (or possibly there might be a plurality) under which the title is more immediately derived.

“On the other hand all official investigation involves the payment of official fees; and when official fees have to be added to the ordinary professional ones, it is not difficult to see what, on the score of costs, would be the tendency of a registration system in the particular in question.

“Supposing the cost only about the same, the consideration to the owners of land then arises, into whose pockets they would prefer this cost to find its way, the registry officials or their own professional advisers? The landed interest may not be enamoured of bills of costs,

but it is not difficult to conjecture in favour of which of the two classes their vote would be given."

Considering then the other hypothesis, that of the registered ownership being a mere *trusteeship* for the beneficiaries, the author says:—

"Now, it may be presumed, this cannot be placed on a higher footing than, to take the instance of stock, its inscription on the register in the names of trustees.

"But the inscription in the names of *A. B.* and *C. D.* of any given amount of stock or quantity of land confers no information as to what may be the interest of *E. F.* in it, or in fact whether he have any at all, and the development of that interest requiring, from the very nature of things, deeds collateral to the register to determine and declare it, the examination of these deeds becomes necessary in order to arrive at the required information.

"In this case, at all events, there must be the double course, that of an inspection of the registry, and the examination into the documents, and, the latter being supposed to be about the same under both systems, the only result under this head would appear to be, a new burthen involved in the additional cost of having a registry to deal with."

Passing next to the second head of cost, in the case of settlement, the instrument of settlement itself, Mr. Goodeve suggests that it is not essential that the question of the cost of instruments should be tried by the frame of deeds under the existing practice, and under which the length of the document is the source of a large proportion of the cost. He says—

"It has long been generally conceded that the structure of legal instruments might undergo large reduction in point of length, with no less improvement to the document itself as a work of art, than diminution of cost to the unfortunate victim on whom the tax of needless and embarrassing length is now levied.

"For instance, take in the case of a settlement the lengthy limitation of a separate estate to a married woman, which ordinarily runs somewhat in the form of:—

"Upon trust that they the said *A. B.* and *C. D.* or the survivor of them his executors or administrators do and shall during the life of the said [the wife] receive and take the rents, issues, and profits thereof and stand possessed of the same upon trust to pay the same as and when they shall become due into the proper hands of the said [wife] for her sole and separate use apart from the said [*E. F.*] her said intended husband and so that the same may not be subject to his debts, engagements, or control and so that she may not have power to alien, charge, or incumber all or any part of such rents, issues, and profits but that her receipts alone or that of her

appointees after the same shall have become due shall be a sufficient discharge for the same."

"All which might with equal precision, both of expression and legal effect, be met by the simple clause.

"Upon trust for the said [wife] for her life for her separate use and so that she may not have power to anticipate the income thereof."

"Or take the case of the ponderous receipt clause:—

"Provided and it is hereby agreed and declared by and between the parties hereto so far as they are respectively interested that the receipts or receipt in writing of the said *A. B.* and *C. D.* or the survivor of them his executors or administrators or other the trustees or trustee for the time being of these presents shall be good and sufficient discharges or a good and sufficient discharge to all persons paying the same for the trust moneys for the time being hereof nor shall any such persons or person from and after such payment and the taking of such receipt be obliged to see to the application of what shall be so paid or be responsible or accountable for the misapplication or nonapplication thereof."

"For all which cloud of words there might be substituted with equal effect the clause:—

"Provided that no person paying to the trustees hereof any part of the trust moneys hereof and taking their receipt for the same shall be responsible for the application by such trustees of what shall be so paid."

The Author then justly observes that according to his experience in the conduct of the affairs of their clients, the great bulk of professional practitioners, solicitors, no less than counsel, are actuated by the honest desire to transact the business, in which they are engaged, on the footing of economy and the saving of cost, rather than in reference to their own personal emoluments; and, in matters of drafting, the instructions, from solicitors to counsel, often actively enjoin conciseness. At the same time it happens, unfortunately that the existing system of *professional remuneration*, and particularly as administered under the process of a taxation, fixes the emolument of a transaction upon its more tangible subjects, often leaving that ill paid, or not paid at all, on which most labour or skill has been in fact bestowed, and this system is, in its results, somewhat antagonistic to short deeds.

"On the other hand," Mr. Goodeve remarks that "it must not be forgotten that if the length of settlements be increased by legal verbosity that length has its origin, to a great extent, in the complication of provisions to which the emergency of the case ordinarily gives rise, and is oftentimes augmented by the capriciousness

and whimsicality of the settlor; a capriciousness and whimsicality which it frequently happens no judgment or remonstrance, on the part of his legal adviser, can restrain.

"In France, and some other countries, the law, to a great extent, regulates the relationships of domestic life, and with this the disposition of the family property. Hence, settlements are frequently there nothing more than a declaration by the parties of the Article of the Code under which it is intended that the property is to be administered, and the instruments exhibit accordingly comparative brevity. Those best acquainted with the habits and feeling of the people of this country in disposing of their property, and most familiarised to the collection of their instructions on occasions of settlement, whether upon marriage, will, or otherwise, will best be able to appreciate how far such modes of settlement would be likely to be recognised as model ones by the genius of the English people."

With this preface, Mr. Goodeve proceeds to the question of *cost* as connected with the preparation of the instrument of *settlement* itself.

"And here let the question be considered upon the two alternative suppositions of the registry, developing the beneficial, or being restricted to a representative, ownership. And first upon the former supposition.

"Now, in the case in which the interest to be conferred absorbs the ownership in a single donee, though difficult to devise the machinery, it may be possible to conceive the theory of the register itself operating as the act of settlement.

"A., for example, being the registered and absolute owner of an estate desires to make a gift of it to B.—possibly the register might be made the medium of effecting the transfer, as in the instance of stock. Of deeds, however, of this simple nature, the cost, as a general rule, at most is but trifling. In cases of settlement the length of the deed does not ordinarily arise from the insertion of recitals, but from the provisions of the operative portion of the deed, and in a mere deed of gift from A. to B. the latter would, from the nature of things, be of the simplest and least expensive kind.

"Were the gift to be effected through the medium of a registry still some cost must be incurred by the operation, and it may be questioned whether the fees, and other expenses of registration, would not exceed the cost of the present deed."

"How the register can itself form the settlement, save in the instance of this complete absorption of the whole interest by the transfer to a single donee, remains to be explained.

"Suppose the simple case in which in the example of an estate appearing on the registry as limited to A. for life, with remainder to B. in fee simple, B. were to transfer the remainder to C.; notwithstanding the transfer, C. would

never have on the register the title in possession, until something got there to show the death of A., and this by legal proof.

"Suppose, again, an estate limited on the registry (in the nature of a legal settlement) to A. for life, with remainder to his children, equally to be divided between them; the title of the children, would require subsequent manifestation before it could be got on the registry. It must be shown what is the number of the children to take under the gift, and who, respectively they are, and the legitimacy of the whole class must be established by proof of the marriage of the parents, with the corresponding proof of each of the parties being member of the common class. In other words, a pedigree must be shown and vouched before any interest whatever could be recognised under the registry."

This species of settlement, by the act of registry, would seem too to be practicable only in transactions *inter vivos*, at all events under the existing state of the law.

"In the case of testamentary disposition the proprietor does not divest himself of the ownership during his lifetime. It is the will accordingly, and not the registry, which is, in this instance, the real act of settlement, and before validity can be ascribed to any registration of a will as constituting in itself, i. e. by the act of registration, a transfer, some process would have to be gone through, and some machinery to be devised accordingly, which would establish the validity of the will upon the same sort of principle upon which, in a testamentary gift of personalty, the grant of probate of the Ecclesiastical Court constitutes a judicial warranty of the title of the executor.

"In fact, though in the case of stock the Bank acts, to a given point, upon the testamentary title, that point is only to the extent of a recognition of the title, not of the legatee, but of the executor, and of the latter only, because the law of the land constitutes the grant of probate by the Ecclesiastical Court conclusive on the question of the executor's title.

"The case of intestacy, and the right of succession by heirship, would stand upon a somewhat analogous footing.

"It has indeed been proposed, in the case of testamentary disposition, to invest the executor with the character of a real as well as a personal representation, and in the instance of an intestacy to create a real representative on the principle of the present constitution of a personal one. This might obviate the difficulty, so far as it would call into being a party competent to deal with and to direct the registration, and with the concurrence of that party the title, either as derived under the will or under the intestacy, might be put upon the register. Anything short of this would seem to leave the case to all the difficulties suggested above, as impeding the registration of this species of will.

"Supposing it to be practicable to devise a

scheme constituting the register an efficient act of settlement, yet, upon the theory of its developing the beneficial interest, the registry must still play the part now played by the deed. There is no magic in the mere substitution of the machinery. The register must record the intentions of the settlor, and, it would seem, in pretty much the same terms as this record would now be accomplished by a deed."

On this point Mr. Goodeve refers to the case of *copyholds*, where the roll of the manor is made the act of assurance, and where the form of settlement (so far as regards the point in discussion) is precisely the same as in settlement of real property of any other tenure.

"*Copyhold settlements* do not cost less than freehold ones,—in fact, the fees payable to the steward constitute a separate head of charge, and additional to that incurred with the professional advisers of the parties. Judging from this analogy, it may be inferred, that under the proposed system, an *official* would not be likely to be a cheaper settlement than the *private* one which is now effected by deed; on the contrary, the tendency would appear to be the other way."

Turning, then, to the hypothesis of the register being based on the representative principle only—here, says the Author, the analogy of stock settlements will strictly apply. All settlements of this nature are accompanied, or, rather, it should be said, created, by a contemporaneous deed, which deed is, in fact, the settlement. So must it be in the case of a transfer of land to the registered owner for the purposes of settlement. The only effect of the change, therefore, as to this point, would be to *add* to the cost of the deed of settlement the registration of transfer. Indeed, unless the whole beneficial proprietorship were to be left exposed to the jeopardy of the dealings of those in whom the legal ownership became vested by the transfer, even the deed and the transfer would not together make up the whole cost. There would, it may be supposed, have to be added that of the caveat, which is proposed as the protection against the risk.

## JUDGMENTS EXECUTION, &c., BILL.

### EXECUTION OF PROCESS IN IRELAND, SCOTLAND, &c.—SECURITY FOR COSTS.

THIS Bill, which has been again introduced by Mr. Crauford, proposes that decrees and orders of the Court of Chancery in England may be registered and enforced in Ireland, and *vice versa*, and decrees or

orders of the Encumbered Estates' Commissioners in Ireland may be registered and enforced in England; and that decrees of the Court of Chancery in England or Ireland, or of Encumbered Estates' Commission in Ireland, may be registered and enforced in Scotland.

It is also proposed, that where final judgment has been obtained in the *Common Law* Courts at Westminster the person entitled to the benefit thereof may register a memorial of such judgment, and *vice versa*, and obtain execution; and where final judgment has been obtained in the Courts at Westminster or at Dublin, the persons entitled to the benefit thereof may register a memorial of such judgment in Scotland, and obtain execution.

Decrees of Court of Session, or of Sheriff or Burgh Courts in Scotland, may be registered in England or Ireland, and execution obtained thereon.

Consequent on these amendments, it is proposed that the rule by which the defendant is entitled to security for costs, where the plaintiff resides in a different part of the United Kingdom, shall be abolished; and costs are not to be allowed in actions on judgments, unless by order of Court.

The Judges are empowered to make rules for the execution of the Act; and the Judges at Westminster and Dublin to issue altered writs of execution, if necessary. The Act is not to affect defendants residing out of the jurisdiction of the Court at the commencement of the suit or action.

The clauses of the Act are as follow:—

So much of the Act 41 Geo. 3, c. 90, as is contained in the 5th and 6th sections thereof, and also so much of the Act 12 & 13 Vict. c. 77, as is contained in the 14th section thereof, is hereby repealed; and after the passing of this Act, on production to the registrar or other proper officer of the Court of Chancery in Ireland of any decree or order or of an office copy of any decree or order which shall have been made or shall hereafter be made by the Court of Chancery in England for the payment of any money, and on production to the clerk of the entries of the report office of the Court of Chancery in England of any decree or order or of an office copy of any decree or order which shall have been made or shall hereafter be made by the Court of Chancery in Ireland, or by the Commissioners for Sale of Encumbered Estates in Ireland, for the payment of any money, every such decree or order shall be entered in the registrar's book of the Court of Chancery of Ireland or England, as the case may be, by the officer to whom the same or an office copy of the same shall be produced, and such entry shall be certified by the proper officer at the foot of such decree or order or

office copy; and every decree or order so entered shall from the date of such entry be of the same force and effect in all respects, and may in all respects be acted upon and dealt with, as a decree or order made in a suit by the Court in the registrar's book whereof it shall be so entered: provided that any decree or order which may have been enrolled under the provisions of the said Acts before the passing of this Act may be enforced in like manner as if the said sections of the said Acts had not been repealed.

2. Where any decree shall have been pronounced or shall hereafter be pronounced, or any order shall have been made or shall hereafter be made for the payment of any money, by the High Court of Chancery of England or Ireland, or by the Commissioners for the Sale of Encumbered Estates in Ireland, on production at the Office in Edinburgh kept for the Registration of Deeds, Bonds, Protests, and other Writs registered in the books of Council and Session of such decree or order, or of an office copy of such decree or order, such decree or order shall thereupon be registered in a book to be kept for that purpose, and to be called the Register for English and Irish Decrees and Judgments, in like manner as a bond executed according to the Law of Scotland, with a clause of registration for execution therein contained, and every decree or order so registered shall from the date of such registration have the effect of, in all respects, and may in all respects be acted upon and dealt with as, a decree of the Court of Sessions, to all intents and purposes as if such decree or order had originally been obtained or pronounced in the Court of Session.

3. Where final judgment in an adverse suit shall have been obtained or entered up, or shall hereafter be obtained or entered up, in any of the Courts of Queen's Bench, Common Pleas, or Exchequer at Westminster or Dublin respectively or in any Superior Court of Record in England or Ireland respectively, or any debt, damages, costs, or rent which shall have been thereby adjudged to be paid, on production to the Master of the Court of Common Pleas at Dublin, where such judgment shall have been obtained or entered up in any of the said Courts in England or to the senior Masters of the Court of Common Pleas at Westminster, where such judgment shall have been obtained or entered up in any of the said Courts in Ireland, of a memorial of such judgment, in the form contained in the schedule to this Act annexed, signed by the proper officer of the Court where such judgment has been obtained or entered up, and sealed with the seal of such Court, such memorial shall be registered by such Master in a register to be kept in the Court of Common Pleas at Dublin and at Westminster respectively for that purpose, and to be called in the Court of Common Pleas at Dublin "The Register of English Judgments," and to be called in the Court of Common Pleas at Westminster "The Register of Irish Judgments," and every

memorial so registered shall from the date of such registration have the effect of, in all respects, and may in all respects be acted upon and dealt with as, a judgment of the Court in which it is so registered, to all intents and purposes as if such judgment had been originally obtained or entered up in such Court: provided always, that no proceeding to revive such judgment shall be taken, nor shall any writ of error be brought on any such memorial registered under the authority of this Act.

4. Where final judgment in an adverse suit shall have been obtained or entered up, or shall hereafter be obtained or entered up, in any of the Courts of Queen's Bench, Common Pleas, or Exchequer at Westminster or Dublin respectively, or in any Superior Court of Record in England or Ireland for any debt, damages, costs, or rent, on production at the office kept at Edinburgh for the registration of deeds, bonds, protests, and other writs registered in the books of Council and Session of a memorial of such judgment, in the form contained in the schedule to this Act annexed, signed by the proper officer of the Court where such judgment has been obtained or entered up, and sealed with the seal of such Court, such memorial shall be registered in the Register for English and Irish Decrees and Judgments, in like manner as a bond executed according to the Law of Scotland, with a clause of registration for execution therein contained; and every memorial so registered shall from the date of such registration have the effect of, in all respects, and may in all respects be acted upon and dealt with as a decree of the Court of Session, to all intents and purposes as if such judgment had originally been obtained or pronounced in the Court of Session.

5. On production to the senior Master of the Court of Common Pleas at Westminster, or to the Master of the Court of Common Pleas at Dublin, of an extract, in the form contained in the schedule to this Act annexed, of any decree of the Court of Session in Scotland which shall have been obtained or shall hereafter be obtained for the payment of any debts, damages, or expenses, signed by the extractor of the Court of Sessions, or other officer duly authorised to make and subscribe extracts, or on production of an extract, in the form contained in the schedule to this Act annexed, of any decree of any sheriff Court or Burgh Court in Scotland, which shall have been obtained or shall hereafter be obtained for the payment of any debt, damages, or expenses, signed by the clerk of such Sheriff or Burgh Court, or other officer duly authorised to make and subscribe extracts, such extract shall be registered by such Master in a register to be kept in the Court of Common Pleas at Westminster and Dublin respectively for that purpose, and to be called the Register for Scotch Judgments, and such extract when so registered shall from the date of such registration have the effect of, in all respects, and may in all respects be acted upon and dealt with as, a judgment of the Court in which it is so regis-

tered, to all intents and purposes as if such a judgment had been originally obtained or entered up in such Court: provided always, that no proceeding to revive such decret shall be taken nor shall any writ of error be brought on any such extract registered under the authority of this Act; provided also that where a note of suspension of any such decret shall have been passed or a sist of execution shall have been granted thereon by the said Court of Session or any Judge thereof, on the production of a certificate under the hand of the clerk to the bill chamber of the Court of Session of the passing of such note or granting of such sist, to a Judge of the Court in which such extract of such decret has been registered, execution on such registered extract shall be stayed until a certificate be produced under the hand of the said clerk that such sist has been recalled or has expired, or where the note of suspension has been passed, until there be produced an extract, under the hand of the extractor of the Court of Session or other officer duly authorised to make and subscribe extracts, of a decret of the said Court repelling the reasons of suspension.

6. It shall not be necessary for any plaintiff in any of the aforesaid Courts in England, resident in Ireland or Scotland, or any plaintiff in any of the aforesaid Courts in Ireland, resident in England or Scotland, to find security for costs in respect of such residence, unless, on special grounds, a Judge or the Court shall otherwise order, nor shall it be necessary for any party to any suit in any of the aforesaid Courts in Scotland, resident in England or Ireland, to sue by or sist a mandatary, or otherwise to find security for expenses in respect of such residence, unless on special grounds the Court shall otherwise order.

7. In any action brought in any Court in England, Ireland, or Scotland, on any decree, order, judgment, or decret, which might be registered under this Act in the country in which such action is brought, the party bringing such action shall not recover or be entitled to any costs or expenses of suit, unless the Court in which such action shall be brought, or some Judge of the same Court, shall otherwise order.

8. If any person shall forge the signature of any officer of any Court in England, Ireland, or Scotland, or the seal of any such Court, to any decree or order, or to any office copy of any decree or order, or to any memorial of a judgment, or to any extract of a decret, or to any other document required under this Act, or shall tender for registration, or use or utter, any such decree or order, office copy of a decree or order, memorial, extract, or document, with a false or counterfeit signature or seal thereto, knowing the same to be forged, he shall be guilty of felony, and in Scotland of a high crime and offence, and shall upon conviction be liable to transportation for 14 years, or to penal servitude for any term not exceeding 10 years and not less than four years, or to imprisonment for any term not exceeding three

years, with or without hard labour; and every person who shall be charged with committing any such felony or crime and offence may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed, in the country or place in which he shall be apprehended or be in custody.

9. It shall be lawful for the Lord Chancellor, with the concurrence of the Lords Justices, Master of the Rolls, and Vice-Chancellors, or any two of them, in England, and for the Lord Chancellor and the Master of the Rolls in Ireland, and they are hereby required, from time to time to make all such general rules and orders to regulate the practice to be observed in the execution of this Act or in any matter relating thereto, including the scale of fees, to be charged, in the Courts of Chancery in England and Ireland respectively, as in their judgment shall be necessary and proper; and it shall be lawful for the Judges of the Court of Queen's Bench, Common Pleas, and Exchequer at Westminster and Dublin respectively, or any eight or more of them respectively, of whom the chiefs of the said Courts respectively shall be three, and they are hereby required, from time to time to make all such general rules and orders to regulate the practice to be observed in the execution of this Act or in any matter relating thereto, including the scale of fees to be charged, in the Courts of Common Law in England and Ireland respectively, as in their judgments shall be necessary and proper; and it shall be lawful for the Court of Session in Scotland, and the said Court is hereby required, from time to time to make such acts of sederunt to regulate the practice to be observed in the execution of this Act or in any matter relating thereto, including the scale of fees to be charged, in Scotland, as in its judgment shall be necessary and proper: provided always, that such rules, orders, and acts of sederunt respectively shall be laid before both Houses of Parliament within one month from the making thereof, if Parliament be then sitting, or if Parliament be not then sitting within one month from the commencement of the then next Session of Parliament.

10. Such altered writs of execution may be issued in the said Courts of Common Pleas at Westminster and Dublin respectively as may be deemed necessary or expedient for giving effect to the provisions of this Act, and in such forms as the Judges of such Courts respectively shall from time to time think fit to order; and any existing writ of execution the form of which shall be in any manner altered in pursuance of this Act shall nevertheless be of the same force and virtue as if no alteration had been made thereon.

11. Nothing in this Act contained shall operate so as to enable effect to be given to any decree, or order, judgment, or decret made against any defendant who at the time of the commencement of the suit or action was resid-



ing within the United Kingdom but out of the jurisdiction of the Court pronouncing such decree, or order, judgment, or decret, unless the same process or the summons or other proceeding by which such suit or action was commenced in that Court (except in the case of substituted service in Ireland, under section 34 of 16 & 17 Vict. c. 113), shall have been served within its own jurisdiction on such defendant.

12. In citing this Act in any instrument, document, or proceeding it shall be sufficient to use the expression "The Judgments Execution Act, 1854."

## RIGHT OF A PURCHASER TO DEDUCT INCOME TAX

OUT OF

## INTEREST ON PURCHASE MONEY.

CONSIDERING that the Property Tax Act was passed in 1842, and that the question which arose under it between vendor and purchaser, whether income tax ought to be allowed out of interest on purchase-money, has been one of almost daily occurrence in the practice of solicitors, it is somewhat remarkable that until now the point has (as we believe) never been submitted to judicial decision. It affords pregnant evidence of the disinclination of solicitors to litigate a question which, however open to doubt, is yet capable of being settled amicably.

We are told that the preponderance of the opinion and practice of the Profession inclined to the disallowance of the claim of the purchaser to deduct the income tax.

At length, however, an opportunity has occurred, under the improved practice of the Court of Chancery of obtaining the decision of the Court on the question under the ordinary reference to Chambers to take the account of rents and interest of purchase-money as between vendor and purchaser, and we have the pleasure of conveying to our readers the decision of Vice-Chancellor Wood on a point so interesting to the Profession at large, and which becomes every day of greater importance to their clients, as the tax has been increased and is likely to be increased still more.

The question arose in a suit of *Bebb v. Bunny*, which was for specific performance of a contract for sale of an estate in Berkshire, to be completed as from Christmas, 1852, the purchaser taking the rents and paying interest on the purchase-money to the vendor from that time. As the Property Tax Act of 1842 (5 & 6 Vict. c. 35) expired in effect on the 5th April, 1853, from which time the tax was levied under the authority of the Act of 1853 (16 & 16 Vict. c. 34), the question involved the construction of both Acts on the point at issue.

In taking the account of interest before the Chief Clerk (Mr. Bloxam), the purchaser claimed to deduct income tax from it; the vendor resisted the claim; and the Chief

Clerk remitted the question to the decision of the Vice-Chancellor, before whom it was argued by the respective solicitors on the 18th December.

On the part of the purchaser, the claim to deduct the income tax was rested on the 102nd section of the Act of 1842, as regards the interest due from Christmas, 1852, to the 5th April, 1853, and on the 40th section of the Act of 1853, as regards the subsequent interest, and on the following grounds:—

Interest on purchase-money comes within the description of "yearly interest" or "annual payments" provided for by both clauses in substance for the purpose of constituting them,—there is no distinction between such interest and the interest on mortgage-money accruing after the period for payment provided by the covenant in the mortgage deed; e.g. take the ordinary form by which the mortgagor covenants to pay 1,000*l.* borrowed and 2*½* *per cent.* for interest at the end of six months from the date of the mortgage, or 2*½* *per cent.* at the end of six months and 1,025*l.* at the end of 12 months,—in either case the borrower having paid the interest, but having failed to pay the principal at the period fixed for its payment, is liable to be sued at any time for the interest which subsequently accrues *de die in diem*, and such interest is admitted to be yearly interest within the terms of both Acts.

The cases noted below<sup>1</sup> all arose out of applications for orders to pay purchase-moneys into Court, fell short of deciding the question, because the clause directing the deduction applies only to cases of direct payment of interest by the party liable to pay to the party entitled to receive it. In *Holroyd v. Wyatt*, Vice-Chancellor Knight Bruce grounded his decision on the practice of the registrars in drawing up such orders. In *Duval v. Mount*, Lord Langdale, M. R., reversed the question as between the vendor and purchaser, by directing the purchase-money not to be paid out without notice to the purchaser, so as to give the latter the opportunity of making good his claim to the deduction before the interest reached the hands of the vendor. In *Flight v. Camac*, Vice-Chancellor Kindersley, expressed a strong opinion in favour of the right of the purchaser to the deduction as between him and the vendor, which more than counteracts the opposite view of the question suggested by Vice-Chancellor Knight Bruce in *Holroyd v. Wyatt*. *Dinning v. Henderson*, Law Jour. 191, N. S. 273, was cited as a direct authority in favour of the vendor's claim. In that case, which was an order on suit, a creditor had proved a debt founded on a dishonoured bill of exchange and the Master in calculating interest on the bill had deducted income tax from the interest. On motion for an order to the Master to review

<sup>1</sup> *Holroyd v. Wyatt*, 1 De Gex & S. 125; *Duval v. Mount*, 35 L. O. 260; *Dawson v. Dawson*, 11 Jur. 984; *Humble v. Humble*, 12 Beavan, 43; *Flight v. Camac*, Weekly Reporter 1854. 437.

his report in that respect, Vice-Chancellor Knight Bruce, after considering the certificates of the Masters Rose, Farrer, and Dowdswell, that the practice of their offices was to allow the deduction, refused the application.

On the part of the vendor it was contended, that interest on purchase-money was not annual interest, within the meaning of either of the Property Tax Acts, the decisions of the Court on the orders for payment of purchase-moneys into Court were relied upon. It was contended that the 102nd section of the Property Tax Act of 1842, revived by the 5th section of the Act of 1853, draw a clear distinction between interest reserved annually and interest not so reserved, and that the provision for deduction of the tax in that Act, applied only to the former and not to the latter, and that the tax on interest not annual was to be returned by the receiver, as gains and profits under Schedule D.

In reply, on the part of the purchaser, it was admitted that the question might be more open to doubt so far as it depended on the Act of 1842, on account of the juxta-position of the provision for the deduction in section 102 of that Act; but it was contended that the provision for deduction in section 40 of the Act of 1853 overrode the provision in the former Act, and that it, and also the provision in the Act of 1842, applied to all interest which would, under the largest interpretation of the Acts, come within the description of yearly interest; that the clear intension of both Acts was that the taxpayer should ultimately pay the tax on his net income only, and it therefore allowed him to deduct the tax on the interest of all charges to which his property was subject, so that as in this case the purchaser would receive the rents minus the tax so he would pay the interest minus the tax,—that if he paid the interest without deducting the tax, there was no provision in the Act which would enable him to deduct the interest from either property or gains and profits, and therefore he would ultimately pay income tax on more than his net income, and the Government would receive a tax to which, according to the true intent and meaning of the Act they were not entitled.

The Vice-Chancellor, after taking time to consider the question, decided that the purchaser was entitled to deduct the income tax on the interest. We shall probably be able to give the judgment next week.

#### NOTICES OF NEW BOOKS.

*Copyright and Patents; or, Property in Thought: being an Investigation of the Principles of Legal Science, applicable to Property in Thought; with their bearing on the case of Jefferys v. Boosey, recently decided by the House of Lords. In a Letter to the Right Hon. Lord Brough-*

*ham and Vaux. To which is appended a corrected Report of the Judgments delivered by the Lord Chancellor, Lord Brougham, and Lord St. Leonards. By MONTAGUE R. LEVERSON, Attorney and Solicitor. London: Wildy & Sons. 1854.*

MR. LEVERSON'S Treatise on Copyright and Patents has arisen from the consideration of the recent case of *Jefferys v. Boosey*, which involves some important principles of law. The facts of that case are briefly as follow:—

"Vincenzo Bellini, an alien, then and since resident out of the Queen's dominions, wrote a musical work. Bellini, by the laws of Milan, acquired a copyright therein, and assigned that copyright to Ricordi, another alien, then also resident at Milan, where the assignment was made pursuant to the laws thereof. Ricordi came to England, and assigned to Boosey, the original plaintiff, all his, Ricordi's, copyright in the said work for Great Britain and Ireland only. Boosey is an Englishman, and after the assignment, published the work in London; the work never having been before published either in England or elsewhere.

"Boosey complied with the requisition of the Statutes as to Stationers' Hall, &c., and afterwards Jefferys, the original defendant, pirated the work, and Boosey brought an action against him."

The Author thus states the questions arising on this state of facts:—

"Can an alien, resident abroad, acquire here a copyright in his own composition?"

"If so, can he assign such copyright to another alien?"

"Can such assignee assign a portion of such copyright to a citizen, by whom publication is first made?"

The Court of Exchequer Chamber decide these questions in the affirmative, but on an appeal to the House of Lords the decision was overruled. Mr. Levenson states that—

"It was admitted on all hands, and it is the fact, that the Courts were unfettered by precedent in the matter.

"It was admitted, and it is the fact, that the Statutes regulating copyright are so far silent, that they do not expressly compel a decision either way. That, consequently, the question must be decided on 'general principles,' though I fear much those who used this term had no distinct knowledge of the principles by which they would be guided.

"If then, as was argued by some, Common Law is silent, and that at Common Law, whatever may be meant thereby, no copyright exists, it remains to put a construction on the Statutes.

"Of all the constructions of which the words are capable, without an evident discre-

gard to their sense, the one to be selected is just that which will most tend to effect the object of society, *viz.*, the welfare and happiness of its members; that, if anything, must be the meaning of a decision by an appeal to general principles; in other words, that construction which shall be most consistent with justice.

"If it be true, as contended by others, that copyright exists at Common Law, the meaning of this expression translated into sensible language is:—What regulations on the point in question will best promote the object of society?"

"Not that for one moment I would do so much injustice to the Common Law of England, as to suppose that which goes by the name as calculated in any but a remote degree to promote so insignificant an object, so contemptible an end, as the welfare of those subjected to its rules—far from it—in innumerable instances in which the law has been established. But on points such as the present, in no way fettered by Statute or decision, such, if it have any meaning at all, must be the meaning of the phrase 'the Common Law.'"

The Author then asks what are the rights involved in the consideration of the present case, which for the attainment of the object of Society, it is fitting should be established? and he proceeds fully to discuss this question of *principle*, from which we make the following extracts:—

"The subject in question is one of property.

"An examination of the question of property, and of the rights it is fitting should be established, in that regard will lead by easy steps to their application in the present instance.

"To procure the means of subsistence, and afterwards of enjoyment, man devotes himself to labour; without these means he perishes:—an insufficient supply is a source of misery;—it is a good thing then that he should procure these means, meaning by a good thing that which tends to man's happiness. Having produced he must be suffered to enjoy, otherwise he will soon grow tired of his useless toil, and ceasing to produce, the earth would be filled with misery.

"The enjoyment, then, of what he has produced by his labour, is among the earliest provisions of a society emerging from barbarism. Thus are established the rights of property, and a body of laws having for its object the defining and protection of these rights. So important is felt to be the production of these means, that to facilitate their production men enter into agreements with one another relating thereto. Society feeling the advantage of such agreements, perceiving the important part they play in securing enjoyment to the producer, and consequently promoting production, enforces the fulfilment of such agreements by its law. Agreements tending to promote the welfare of society are thus legally enforceable; these legally enforceable agreements are called contracts.

"A slight examination only, convinces the observer of the importance to be derived from the existence of the greatest possible stock of the necessaries and comforts of life, produced by labour, *i. e.* of wealth; consequently the greatest possible inducement to production should be held out to the labourer.

"The greatest possible inducement will be the greatest possible proportion of what he has produced, that is, wherever practicable, the whole of it, less the least possible amount that shall be necessary for the purposes of protection from depredators and assailants, whether from within or without: meaning by whatever practicable the non-existence of a preponderating inconvenience. So important is the giving of this inducement felt to be, that rather than give less to one set of labourers than the full amount of the produce of their labour, such deduction made as before, something more is given, in the shape of something which neither they nor any one else produced; and because the whole value of the labour applied to land not being restored with each successive crop, continues partly to exist in the shape of improved fertility, and cannot in the present state of knowledge be distinguished from what is really rent; in the shape of exclusive permission to cultivate this land so by them before cultivated; this rent also is permitted to be retained by the cultivator.

Mr. Leverson then argues in favour of literary property that—

"There is nothing more purely the produce of labour than a discovery or an invention. To the discoverer or inventor the exclusive right thereto belongs, and, as with all other property, becomes vacant by the death of the owner; like other property, it should then be dealt with in the manner that shall be meetest for the object of society. But, it may be said, discoveries or inventions, or thoughts of any kind, are not wealth, on the unquestionable ground of the importance whereof this argument rests. True, but of all the productions of labour, none are more important, none more effectual, for the promotion of the welfare of society than they; since these very discoveries and inventions either on the one hand lead to the most effectual means of production, or they tend otherwise to gratify in the highest degree all those faculties of the mind, the gratification whereof excites that state of feeling emphatically called happiness. Hence the largest possible inducement should be held out to those labourers who may be disposed to labour in so important a field.

"Discoveries or inventions are thoughts. With thoughts unexpressed the legislator has no concern; thoughts expressed only can be dealt with by him. They are expressed either by vocal or by visual signs. Thought leads to thought, intimately and directly widely spread; there is no limit to the future benefit derivable from a single thought. It is, therefore, greatly important to spread abroad as much as possible the thought of the author, care being taken that

sufficient inducement be left to the thinker. The right of property, then, of the author in his thoughts, when expressed by signs, may be, and experience teaches that it is, subject to a limitation in point of duration, by the existence of antagonistic convenience attached to the dissemination of thought, not extending to the right of property in other produce of labour. I say a limitation in point of duration, and for this reason,—other things equal that motive is least efficient, the operation whereof is most remote. Hence the abatement made from the labour inducing motives should be remote as possible; also it is that limitation, otherwise convenient to the community, being that to which the inconvenience of uncertainty is attached in the least degree.

"To the visual signs of thought the thinker may acquire right in the modes appointed for the acquirement of other species of property, failing such acquirement, he possesses still the right of property in his thought, and that alone. Can it be said, that in these thoughts others should acquire, without his consent, a right of property?

"Expressed by visual signs, the discoverer, or author, publishes his thoughts to the purchaser of their expression, at the price to which the author and purchaser agree. Of these thoughts for his own use, the purchaser of the signs by which they are expressed becomes the possessor.

"If any other means can be devised by which the exclusive enjoyment of the produce of his labour can be assured to the author, than the exclusive right of giving his thoughts to another, adopt such means; for my own part I know of none. On the other hand, to restrict him who shall thus have purchased the author's thoughts from every application thereof to any purpose of utility, would in effect put a stop to the purchase. To restrict him from their expression by vocal signs, or from the personal and manual copy of their visual expression, would in most cases be productive of far greater inconvenience than such restriction purports to prevent.

"But he who purchases the visual signs of thought, of that which he has purchased may dispose,—this follows from the principles of contracts. That he who purchases these visual signs may know the vendor has title for the sale, arrangements should exist for the ascertainment of the owner,—as by registration and the like. Means also should be provided, by which such ownership shall appear on the subject of sale.

"Hence copyright, or patent-right, is not the right of multiplying copies, but the right to the produce of man's labour, often of a kind the most prolific of all labour of benefit to society.

"Society, when by a grant of copyright, or patent-right, it grants to the thinker the exclusive use of his thoughts, and the exclusive enjoyment of whatever may be the estimate formed by society of their value, grants no more a monopoly than when it grants a sole

property to the tailor in the coat he has made or the price he has received therefor.

"In each case all others are excluded from enjoyment. 'Hands off,' exclaims society; and its reason in each case is alike. But because an inconvenience in the shape of uncertainty exists in the case of property in thought, and does not exist in a noticeable degree in the case of property in the coat, society requires the thinker to remove this uncertainty, on pain of perceiving the results of his labour become the common property of the community.

"In establishing regulations for the convenient direction and exercise of the right in this peculiar instance, the legislature should impose such regulations and limitations as would produce, on the whole, the greatest proportionate advantage, compared with the disadvantages inseparably connected with this, as with all other human actions and regulations. Whether the rights that have been established with regard to ownership of thoughts expressed by visual signs, are the meetest for the welfare of society, is not my present purpose to inquire, as it would need a complete exposition of the existing law thereon."

We must refer to Mr. Leverson's Essay for the further development of his views in support of the Common Law right of an author or inventor to the exclusive privilege of publishing copies of his original work or invention. The argument is conducted with much force and earnestness, and reflects credit on the Author for the zeal and eloquence with which he advocates the interests of literary and scientific men.

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*The Common Law Procedure Acts of 1852 and 1854, with Notes containing all the Cases either already expressly decided on or tending to elucidate them. With an Appendix containing the Common Law Procedure Acts of William 4, the recent Statutes on Evidence, and the New Rules framed under the late Acts of 1852 and 1854, and an Introduction.* By W. F. FINLASON, Esq., of the Middle Temple, Barrister-at-Law, Author of "Leading Cases on Pleading," Co-Editor of the Common Law Procedure Act of 1852, and Editor of "The Charitable Trusts' Act." London: Stevens & Norton. 1855. Pp. 604.

We can scarcely keep pace with the continued issue of new publications on the Common Law Procedure Acts. Doubtless, their great importance justifies the attention which is bestowed by several members of the Bar on the effect of the New Statutes. The various editions which have been published with notes and commentaries on the

several enactments, will be useful to practitioners in taking proceedings under the new law. We have now before us the work of Mr. Finlason, whose previous labours in expounding other Statutes entitle him to the favourable consideration of the Profession. The Author observes in his Introduction, that

"It is written that there is nothing new under the sun; and the history of Common Law procedure illustrates the saying. All that has ever been evil in it has arisen from an oblivion of its ancient principles; and every step in its improvement is a recurrence to the past, every real reform is a restoration. This may appear paradoxical to those who have not studied its old records; but the writer finds in them the proof that the paradox is truth.

"Nothing could be more practical, more simple, or more just than ancient Common Law Procedure; in substance it contained every element that could adapt it to all the exigencies, or satisfy all the requisitions, even of this commercial age. At the very outset, as respects its process,<sup>1</sup> a distinction was drawn which all our enlightenment has only just arrived at, after generations of complacent 'progress'—the distinction between actions relating to matters of account, or mere money demands, and actions relating to realty. In the former, the process was by attachment and bail, or by summons and arrest; and in the latter by the *less peremptory* process of summons and distress. Nor was this all; the distinction pervaded the whole course of procedure. Where the claim was matter of account it was at once compulsorily referred to auditors (assigned by the Court), whose jurisdiction was summary, whose investigations were conducted by the examination of the parties upon oath, and whose adjudications had all the effect of the judgments of the Court.<sup>2</sup> And if the claim, although not matter of mere account, was one of simple debt, which must involve privity of contract, and must rest on credit, and depend in most instances on the personal communications of the parties, there was a proceeding called 'wager of law,' in which both the parties were examined summarily on oath, and to which if the defendant resorted, while he could by oath purge himself of the claim, that did not suffice unless twelve other men of good character attested upon oath to his credibility; and on the other hand, by resorting to this course, he precluded himself from putting his opponent to the proof of his claim by *pleading* a denial of it; so that practically it came to this, that the parties themselves were examined upon oath without delay before a jury of twelve persons, the party sued relieving the

plaintiff from the onus of proving the debt, and himself undertaking to *disprove* it to their satisfaction.<sup>3</sup>

"Matters of debt and of mere account being thus summarily disposed of in such a manner that there was no refuge for dishonesty, no means of delay, in other cases not of so pressing a character, and in which the questions must depend upon evidence, oral or written, other than that of the parties themselves, the Common Law first held out every encouragement to them to arrange the dispute without resorting to litigation, and in *arbitration* afforded ample means for *voluntary* adjudication of matters of fact and law, while for questions of *law* a yet greater facility was afforded for prompt and inexpensive determination; because, by reason of the state of the Profession, in those more simple times, when the client had unrestricted intercourse with his counsel, and the counsel—who less practised in a Profession than exercised a vocation—had more familiar intercourse with the Bench, the parties, by their advocates, could come down to Court without ceremony, and 'put a case' to the Judges, who would debate and decide it without difficulty."

From this primitive state of pleading and practice, Mr. Finlason proceeds to describe the alterations or improvements in the Common Law Courts down to the "reforms," which took place in 1833, under the Common Law Amendment Act of Wm. 4, the consequences of which are thus described:

"The effect of the new system was an enormous multiplication of pleas, and a consequent increase of expense and complication of *miscellaneous* records, which embarrassed the trial of causes and led to continual failures of justice, either by special demurrers for faults, of form, or by defect of evidence on points not the real matter in controversy between the parties. There was another and perhaps a greater evil still: that, as there was no power of compelling parties to submit matters of debt or account to speedy adjudication by arbitration, one party in such cases was forced to bring an action as his only available remedy; and yet, when it came down to trial, the Judge found in numerous cases that it was practically impossible to try such matters before a jury, and then at the last hour both parties, under pressure of exhortation from the Bench and persuasion from the Bar, agreed to a reference which might have taken place perhaps 12 months before, and *must* have taken place had it not been for the desire of one party to *delay* for which both parties had to pay the penalty in a useless increase of expense."

The following is Mr. Finlason's summary of the improvements effected by the two

<sup>1</sup> "Mirror of Justice," c. 2, s. 6.

<sup>2</sup> "Bro. Abr. Account. In matters of account the defendant could not plead a denial of his liability, which was solely for the auditors. 3 Edw. III., 53.

<sup>3</sup> "14 Edw. III. 3; 8 Hen. IV. 29; 13 Hen. VII. 4; Keil. 39; 13 Hen. VI.; Keil. 41."

## Common Law Procedure Acts of 1852 and 1854.

"The Common Law Procedure Act of 1852 lays down its great principle, so far as actions at law are concerned, by declaring that it shall be sufficient if any pleading set forth sufficient ground of action or defence, and that no pleading shall be deemed insufficient for any objection heretofore ground of special demurrer; so that all the formalities recognised by the Acts of Elizabeth and Anne are swept away by the Act of Victoria, which re-affirms the principle asserted under Edward III., that by the forms of law no man shall be prejudiced, so that the substance of the action be shown; and, breaking through all the sophistries and subtleties of Blackstone, recurs to the healthier doctrines of Bracton. As arising out of this elementary principle, another principle is laid down, that general pleading is sufficient until the point in dispute is arrived at. And, in order to carry it out, the largest possible power of amendment is allowed so far as necessary to determine in the existing suit the real matter in controversy between the parties, without any limit or condition except such as the obvious justice of the particular case may dictate. And where this extensive power cannot be applied provision is made for preventing, even after verdict, a miscarriage of justice through misapprehension or mistake. Such were the salutary provisions of the Act of 1852 as respects pleading. But it was not restricted to pleading. Provision was made for trial of questions without pleading—questions of fact by issue, questions of law by special case; it being also provided that on the finding judgment might be entered for payment of any sum of money, the right to which the finding resolved. And, for the first time in the history of English law, power was given to sue either British subjects or foreigners residing out of the jurisdiction of the Courts of this country. Nor was this all; some attempt was made towards the attainment, or rather the restoration of speedy adjudication in matters of mere debt or money demand, partly by providing that by means of special indorsement on the writ judgment might be signed thereupon, and partly by facilitating the procedure on judgment by default.

"Such was the ample scope of the Common Law Procedure Act of 1852. But large as it was it was far from doing all that was to be done; the same Commissioners recommended in a second report still further improvements, which, with the warmest judicial and legislative approval, were soon carried out; and this year a second Common Law Procedure Act supplied some defects of the first, and introduced some still more important improvements in our system of civil judicature. Of these the first and perhaps the most important is a practical revival of the ancient procedure in matters of account—a compulsory reference to an arbitrator—the only difference being that he is appointed by the parties instead of by the Court,

and that he is to be arbitrator, not merely auditor. Arbitrators may state special cases for the opinion of the Court, and Judges may direct special cases on matters of law or issues on matters of fact, without waiting for the consent of the parties, and with such consent the Judge may try questions of fact. The jurisdiction by arbitration is extended by enacting that every agreement or submission to arbitration may be made a rule of Court by either party (and so irreversible and enforceable) unless it contain an *express* stipulation that it shall not be.

"Among various improvements in our system of trial, the most important are a provision for stamping documents, so as to prevent parties being defeated by stamp objections, and a provision for a tribunal of appeal on motions for new trials. There are some novel and most important provisions with respect to the obtaining of evidence, power being given to Judges to direct oral examinations of witnesses or parties before trial, or to permit the parties to a suit to examine each other on written interrogatories before trial, so as to obtain all the advantages of a bill of discovery; and power is also given to the Judges to allow inspection of any property the inspection of which may be material to the proper determination of the matter in dispute. A procedure is provided for attaching the debts of a judgment debtor after the manner of the custom of foreign attachment in the city of London. A plaintiff may, by writ of mandamus, call on the Courts to compel the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested, thus rendering an action at law, as of old, a means of enforcing the performance of any duty, not merely of obtaining pecuniary compensation for its breach. And, on the other hand, a plaintiff may likewise in any action have an injunction against the repetition of the injury for which he sues, thus restoring to the Courts of Law that important department of their jurisdiction which had been usurped by Courts of Equity. And, finally, a great step is made towards that fusion of law and equity which is the grand consummation of legal reformation by providing for the admission of equitable defences in Court of Law.

It is due to Mr. Finlason to quote from his Preface the object he has had in view in presenting his work to the consideration of the Profession. He says,

"Knowing that he would have able and powerful rivals, the Editor has been anxious to compensate by industry for any deficiency in ability, and has especially laboured to render his edition the most complete.

"For this purpose it comprises, not only both the late Common Law Procedure Acts, but also those of William 4, with which they must be read, as in *pari materia*; and likewise the recent Acts as to evidence, which are so closely connected with them; and also, in the

notes, all the cases which either have been already expressly decided on the first Common Law Procedure Act, or tend to elucidate the provisions of the second. Above all, the edition has been delayed until it could include the New Rules under the latter Act.

"It is believed that the reader now has in the present edition, all the Statutes, rules, and cases connected with civil common law procedure, and that it will be equally useful for the student and the practitioner, and answer all purposes of a practical manual, whether at *sisi prius* or in *banco*.

"The first Common Law Procedure Act of 1852 has now been nearly two years in operation, and the decisions upon it are the best testimonies to its utility. As to the Act of 1854, the Editor believes the opinion of the Profession is very favourable; and as to its composition, the *Jurist* most truly has observed that it is deserving of high honour on account of its brevity and condensation: '*We doubt indeed if any Statute effecting such great changes was ever expressed in such few words.*' And, taken as a whole, we regard it as a MODEL ACT."

"The Editor may be permitted to state, by way of explanation, that in annotating an untried Act, the notes must often be in a great degree rather *suggestive* than decisive; but he has endeavoured to open up any source of information likely to be useful for the purpose of exposition or illustration, whether in the way of principle or analogy."

The notes to the various new enactments are very full and valuable.

## LAW OF ATTORNEYS AND SOLICITORS.

### AGREEMENT FOR DELIVERY UP OF PAPERS ON PAYMENT OF FIXED SUM.

It appeared that in April, 1836, the defendant employed the plaintiff as his solicitor in respect of a claim in right of his wife as next of kin in a cause of *Turner v. Maule*, but that in the December following the plaintiff refused to continue to act unless supplied with funds. Nothing further was done in the matter and no bill of costs was delivered, but it was not denied something was due from the defendant to the plaintiff. In December, 1844, upon the plaintiff's changing his offices and employing the defendant to remove his papers, the defendant's papers were discovered and he demanded them, as he intended to prosecute his claim. The plaintiff accordingly, on the following day, produced an agreement, stating he would deliver up the papers upon its being signed, and the defendant executed it, after he had read it and it had been fully explained to him.

The agreement recited that the defendant was justly and truly indebted to the plaintiff in the sum of 200*l.* for business done as his solicitor, as the defendant admitted, and that it had been expressly agreed that no bill of costs should be required by the defendant, but that the said sum should be fixed to be in lieu and full discharge of all bills of costs and other claims and demands of the plaintiff; and also recited the delivery up of the papers. It then witnessed that in consideration of the premises the defendant agreed when and so soon as the Court of Chancery should declare that he was next of kin and as such entitled to the sums of money, &c., in trust in the above cause, the defendant would pay the plaintiff the sum of 200*l.* with interest thereon at 5 per cent. from the date of the agreement. The plaintiff covenanted, until the defendant should be so declared next of kin, not to sue. In 1849, the right of the defendant's wife was established and the moneys were paid over to him in 1853, whereupon the plaintiff filed this bill to enforce the specific performance of the agreement and payment of the money thereby secured. The defendant denied its validity, but offered to pay what should be found due on delivery and taxation of the plaintiff's bill of costs.

The Master of the Rolls said:—

"Notwithstanding some difficulty that may arise from the *dicta* in some of the cases referred to on this subject, I am of opinion that the settlement of a solicitor's bill by the client for a fixed sum is valid, and will not be disturbed by this Court, where it has been entered into fairly and with proper knowledge on both sides. Lord Langdale so decided in the case of *In re Whitcombe*, 8 Beav. 140; and also held, in *Re Eyre*, 10 Beav. 569, that an agreement as to the mode by which a solicitor was to be remunerated, would be properly taken into consideration by the taxing master, and I have myself acted on this principle in the case of *In re Taylor*, which I lately decided."

"The case of *Ex parte Bass*, in *re Stephen*, 2 Phill. 562, does not appear to me to oppose this view of the case. In that case, a large sum of money had been paid to solicitors, for the purpose of obtaining papers from them, and under an agreement that this should finally settle all matters between them. Lord Cottenham ordered the bill to be delivered and taxed; but he did so, not, as it appears to me, on the ground that such an agreement could not, under any circumstances, be entered into between a solicitor and his client, but on the ground that the agreement in question was, in fact, extorted by pressure. The Lord Chan-

<sup>1</sup> Feb. 8, 1854.

cellor seems to have considered that the agreement in that case could not be put higher than payment of the bill; and that if payment had been extorted by such pressure, the client who had paid the bill, under such circumstances, would have been entitled to tax it. In fact, in that case, the very existence of the company seems to have depended on obtaining possession of the documents in the custody of the solicitors, and submitting to their terms.

"But I see nothing in that case to countenance the opinion that, provided the transaction be open and fair and without pressure, a solicitor and his client may not agree that a fixed sum shall be paid to the solicitor, in liquidation of his bill of costs, even though that bill of costs has not been delivered, and even though the object of the arrangement is to enable the solicitor to escape the trouble of making out his bill.

"I am also of opinion, that the circumstance that the money is to be paid at a future time, does not alter the case, or make it, on that account alone, more invalid, than if a sum of money had been paid at the time. I adopt the observation of Lord Langdale in the case of *Whitcombe*, 8 Beav. 144:—'An agreement like this between a solicitor and client, for taking a fixed sum in satisfaction for all demands for costs, is an agreement which may be perfectly good; but this Court, for the protection of parties, looks at every transaction of this kind with great suspicion.'

"Looking at this transaction, therefore, with great suspicion, I proceed to consider whether I ought to act upon and enforce it. The first question to be considered is, was it obtained by pressure on the client? The solicitor refused to give up the papers unless this agreement was signed; he had a perfect right to keep the papers until his bill was paid; and on the other hand, the client, the defendant, might at any time have taxed the plaintiff's bill and have obtained possession of the papers, if he had been in a position to pay the amount found due on taxation. I am of opinion, in this case, that the defendant has not made out such a case of pressure. That he required the papers is certain, and that he could not prosecute his claim without them is probable; and he certainly could not, without a considerable outlay, obtain new ones, if he failed in obtaining these. But I do not find that the want of them was urgent, or that the defendant would have been prejudiced by the delay in obtaining them, even though that delay should have amounted to several weeks or even months. The success of his claim did not depend on his obtaining immediate possession of them, as was the case in the matter of *Stephens*. That is a material difference, not to attend to which would be, in many cases, to defeat the value of the solicitor's lien. It is true that the defendant had no professional assistance in this matter, but I do not find that he was ignorant of what he was about. He was conversant with legal matters, he understood the agreement fully; he did not apply for further time

to consider the matter, he believed, and stated his belief at the time, that the bill of costs could not amount to so large a sum. But admitting such to be the case, provided the disproportion was not so great as to amount to fraud, I am not prepared to say that the amount really due would not be a sufficient consideration to support an agreement for the payment of a larger sum of money, depending on a contingency over which the solicitor had no control, which possibly might never arise, or if it ever did arise, would probably be at a distant period of time. It is next to be observed, that the defendant has had the full benefit of the agreement; he obtained the papers, he prosecuted his claim, and he succeeded.

"It is true that there is frequently a great difference between directing an instrument to be delivered up and compelling the parties to make it effectual; but in the view I take of this case, that difference does not exist here. If I am right in the construction which I, sitting in Equity, put on this agreement, the plaintiff could recover upon it at law. If he cannot, it must be owing to the use of an accidental expression in it, which, confessedly, was not intended by either party, at the time of its execution. I think, therefore, that I must consider how this case would have stood, if an action had been brought on this agreement, and the defendant had instituted a suit to set it aside, and had applied for an injunction to restrain the prosecution of the action. If that case were before me, I should have to consider, whether I could restore the parties to it to the position in which they were when it was entered into. This is manifestly impossible; as I have already observed, the defendant has had the full benefit of it, and cannot restore to the plaintiff what he obtained from him. The lapse of time is another circumstance in favour of the plaintiff. It is true, that the evidence respecting the plaintiff's books and the record kept of the defendant's services is so unsatisfactory, that I am induced to believe, that the plaintiff would have found it extremely difficult to have made out his bill of costs in December, 1844: still this difficulty must be increased and made totally insuperable after the lapse of nine years, and some weight is to be given to this consideration, although not to the extent that would be proper in an ordinary case, where the custody of previously existing vouchers might reasonably have been neglected by a person who considered the matter to be settled.

"In addition to these considerations, I am not satisfied that the defendant has not himself had the benefit of this claim of the plaintiff, in the sums allowed him for expenses by his co-claimants, if I may use such an expression. On this point, however, the evidence is too uncertain to enable me to come to any conclusion without further inquiry: these, however, are minor matters.

"I am of opinion that the plaintiff is entitled to the benefit of this agreement, on the grounds I have already stated, and which may be shortly



recapitulated to be these:—that it does not appear to me that it was obtained by fraud or by undue pressure; that the defendant has had the full benefit of it; that I cannot restore the parties to the position they were in, if I were to set it aside, or to refuse to act upon it; and that if I left the plaintiff to his remedy at law, I might possibly enable the defendant to succeed on a technical point, in the wording of the agreement, which confessedly was not intended by either party at the time of its execution, and which does not appear to me to be its true construction.

"The result is, that in my opinion, the plaintiff is entitled to a decree for specific performance of the agreement, and payment of the money secured by it. No costs." *Stedman v. Collett*, 17 Beav. 608.

### LAW OF COSTS.

#### OF INDICTMENT FOR NON-REPAIR OF HIGHWAY ON REMOVAL BY PROSECUTOR.

THE prosecutor had removed by certiorari into the Court of Queen's Bench an indictment ordered by justices, under the 5 & 6 Wm. 4, c. 50, s. 95, against the inhabitants of a parish for non-repair of a highway. The case was tried on the nisi prius side at the assizes, when a verdict was given for the Crown, and *Wightman, J.*, indorsed on the record an order that the costs of the prosecution should be paid out of the rate made and levied in the parish in pursuance of the above Statute. A side bar rule was afterwards obtained referring it to the coroner and attorney of this Court to tax the costs.

On a motion for a rule nisi to set aside the Judge's order for costs and the side bar rule, *held* that the prosecutor was entitled to his costs, although the proviso in the section only referred to the removal by a defendant, and that the order directing the costs to be paid out of "the rate made and levied" in the parish according to the Statute, was not for that reason bad. *Regina v. Inhabitants of Eardisland*, 3 Ellis & B. 960.

### NOTES ON RECENT STATUTES.

#### COMMON LAW PROCEDURE ACT, 1852.—SUGGESTION ON NOT PROCEEDING TO TRIAL.—NOTICE UNDER S. 101.

It appeared that the plaintiff had given notice of trial for two successive assizes, but had not proceeded to trial at either, and the defendant accordingly, on February 21, 1854, gave him notice under the 15 & 16 Vict. c. 76, s.

101, to bring on the cause at the ensuing assizes, the commission day of which was March 18.

On a rule having been obtained to expunge a suggestion entered under the above section that the plaintiff had failed to proceed to trial though duly required to do so, on the ground that 20 days' notice before the time for giving notice of trial should have been given. Lord Campbell, C.J., in discharging the rule said,— "After service of 20 days' notice to the plaintiff to bring the issue to trial at the sittings or assizes next after the expiration of the notice, the plaintiff is to be in the same position as he would have been formerly had he given a peremptory undertaking to try at that sitting or assizes." *Judkins v. Atherton*, 3 Ellis & B. 987.

### COPYHOLD ENFRANCHISEMENT.

#### MANOR OF KENNINGTON.

SIR,—I have been favoured with the perusal of a tract just published, containing transcripts of the various petitions to the Crown, the Legislature, and Prince Albert, the Chief Steward, praying for the enfranchisement of Copyholds within the manor. A strong and unanswerable case appears to be made out.

The first petition to her Majesty, presented in May, 1836, shows that the copyholders offered voluntarily to relinquish their rights on Kennington Common, estimated at some fifteen-sixteenths of the entire common, on receiving the inadequate and imperfect *quid pro quo* of an enfranchisement of their estates. It does not appear that any answer was given to this petition, except that disclosed in an Act of the Legislature passed in 1852, by which the entire valuable common was vested in Commissioners to constitute a park, freed and discharged from all rights of common and other rights. Whereas when a similar measure lately passed in relation to Battersea, some 1,500l. was given to the persons interested in satisfaction of their rights.

As it would be unreasonable to expect Parliament to repeal the Kennington Common Act, the copyholders have at all events a fair claim to compensation on reasonable terms. In the adjoining manor of Lambeth, belonging to the see of Canterbury, three and a half years' purchase is taken, whereas in Kennington a compensation is outrageously demanded according to the rack-rents, although the ground is let on building leases under the sanction and with the licence to demise of the lord of the manor. I would particularly draw the attention of your readers to the admirable letter of "M. A." in your Number of 29th July last.

Appended is a statement of the fine demanded of Sir William Clayton, Bart., for the

renewal of his lease of the demesnes of the manor amounting to no less than 64,000*l.*, and subjoined is a tabular statement issued in 1848, circulated by the steward of the manor under the authority of the Council, showing the fines which will be demanded on land let on building leases, utterly regardless of the contract with the lord in the licences to demise.

The compiler considers the only ultimate and equitable adjustment of this much vexed question is by the Copyhold Commissioners being authorised to settle the compensation either by payment of a sum in gross or by an annual rent-charge, redeemable according to the Act on certain fixed terms. This he states to be the natural solution of the difficulty, and the only one under which the tenants can look for reasonable protection and redress. It is stated that the Commissioners have already intimated their willingness to undertake it.

OMICRON.

## INNS OF COURT.

### PROSPECTUS OF THE LECTURES

To be delivered during the ensuing Educational Term, by the several Readers appointed by the Inns of Court.

#### *Constitutional Law and Legal History.*

The Public Lectures to be delivered by the READER ON CONSTITUTIONAL LAW and LEGAL HISTORY will comprise the following subjects:—

Causes of the Revolution of 1688—State of Parties at that Period—Review of the Constitutional Law; Declaration of Rights; Bill of Rights—State of the English Church; Jacobite Intrigues; Proceedings against Sir John Fenwick; Law of Treason. Triennial Act. Peace of Ryewick; Conduct of Parliament; Dismissal of Foreign Troops; Impeachment of Lord Somers; Corruption of Public Men; Veto of the Crown; Toleration Act; Liberty of the Press; Improvements in the Constitution.

If these subjects do not fill up the Term, the Reader will proceed to the Reign of Queen Elizabeth.

The Works to which the Reader refers will be:—*Repin* (continued), *Millar's Constitutional History*, *Somerville's History*, *Somers Tracts*, *Dalrymple's Memoirs*, *Hardwicke Papers*, *Statute Book*, *State Trials*, *Parliamentary History*, and *Foster's Crown Law*.

The Reader on Constitutional Law and Legal History will deliver his Public Lectures at Lincoln's Inn Hall, on Wednesday in each week (the first Lecture to be delivered on the 17th of January, 1855), commencing at Two P.M. The Reader will receive his Private Classes on Tuesday, Thursday, and Saturday mornings, at half-past Nine o'clock, in the Benchers' Reading Room, at Lincoln's Inn Hall.

#### *Equity.*

The Reader on Equity proposes to de-

liver during the ensuing Educational Term a Course of Nine Lectures on the Doctrine of the COURT of CHANCERY respecting TRUSTS in REAL and PERSONAL PROPERTY, including the Subject of VOLUNTARY CONVEYANCES and ASSIGNMENTS—on the RIGHTS of MARRIED WOMEN exclusively recognised by the COURT, and on the JURISDICTION under the SIGN MANUAL in LUNACY.

The Reader on Equity will deliver his Public Lectures at Lincoln's Inn Hall on Thursday in each week during the Educational Term, commencing at Two o'clock P.M. (The first Lecture to be delivered on the 18th January, 1855.) The Reader will receive his Private Classes on Monday, Wednesday, and Friday evenings, from Seven to Nine o'clock, in the Benchers' Reading Room at Lincoln's Inn Hall.

#### *Law of Real Property, &c.*

The READER on the LAW OF REAL PROPERTY, &c., proposes to deliver, in the ensuing Educational Term, a course of Nine Public Lectures on the following subjects:—

I.—THE ACCUMULATION ACT. (39 and 40 Geo. III. c. 98). Construction of the second section with reference to portions.—Accumulation independent of the Statute.

II.—TITLE BY PRESCRIPTION—At Common Law—By Statute 2 & 3 Will. IV. c. 71; Rights of Common, Way, and Light; 2 & 3 Will. IV. c. 10; Tithes, Moduses, and Exemptions.

III.—TITLE BY NON-CLAIM—3 & 4 Will. c. 27—sec. 29; Church Property—sec. 30, 31; Advowsons—sec. 3; Estates in Possession—sec. 28; Mortgagor and Mortgagee—sec. 3, 5; Estates in Reversion—sec. 16; Savings from Disabilities—sec. 25, 27; Trusts and Equitable Interests—sec. 40; Money Charged upon Land; Legacies; Judgments—3 & 4 Will. IV. c. 42, sec. 3.

IV.—TITLE BY DESCENT at Common Law; alterations introduced by 3 & 4 Will. IV. c. 106.

V.—ASSIGNMENT OF SATISFIED TERMS—8 & 9 Vict. c. 112.

The Lectures to be delivered to the Private Classes will comprise the following subjects:—For the Senior Class, the text of Sugden on Powers (chap. iii. sect. 1, chap. 18), will form the basis of the Lectures; and the latest decisions illustrating the principles there laid down will be examined and commented on. In the Junior Class, the subject of the Lectures will be "Remainders," and the Text Book, *à Cruise*, Dig. tit. XVI.

The Public Lectures will be delivered at Gray's Inn Hall, on Friday in each week, at Two P.M. (The first Lecture to be delivered on the 19th of January, 1855.) The Private Classes will be held in the North Library of Gray's Inn, on Monday, Wednesday, and Friday Mornings, from a quarter to Twelve to a quarter to Two o'clock.

#### *Jurisprudence and the Civil Law.*

The Reader on JURISPRUDENCE and the

CIVIL LAW will, in the course of the ensuing Educational Term, deliver Nine Public Lectures on the following subjects :—

I.—ON SOVEREIGNTY. The nature, limits, and criteria, of Territorial Sovereignty—The history of the Conception, and its importance in Theories of Jurisprudence—On some complex forms of Sovereignty, with reference, more particularly, to the United States of America and to the Germanic Confederation.

II.—ON THE LAW OF PERSONS. On some peculiarities in the Condition of early Societies, and the durable effects which they have produced on Ancient and Modern Jurisprudence—The Power of the Father, and the Tutelage of Women and Pupils—On the Original Character and Objects of these Institutions, and the Agencies by which they were progressively modified—On Legal Fictions and their place in Jurisprudence—On the Prætorian Equity, and the principles descended from it to Modern Law.

III.—ON THE LAW OF THINGS. On the order and connection of the Departments of Law—On the different classes of Rights, and their relation to each other—On Universities of Rights, and Universal Succession—On Ownership and its Modifications—On Obligation, Contract, and Delict.

With his Private Class the Reader proposes to discuss the Roman Law of Contracts, Testaments, and Legacies, employing as his Text-book the *Institutiones Juris Romani Privati* of Warnkönig. It is desirable that Students should provide themselves with the text of Justinian's Institutes, and of the Commentaries of Gaius; and also, if possible, with the *Explication Historique des Instituts* of Ortolan, or with the English Edition of the Institutes by Sandars. Copies of the entire *Corpus Juris* will be found in the Lecture Room.

The Public Lectures will be delivered in the Hall of the Middle Temple on Tuesday in each week, at Two P.M. (The first Lecture of the course on Tuesday, Jan. 16th, 1855.)

The Private Classes will assemble at the Class-room in Garden Court on Tuesday, Thursday, and Saturday evenings, from 7 to 9 o'clock.

#### Common Law.

THE READER ON COMMON LAW proposes to deliver, during the Educational Term commencing the 11th January, 1855, a Course of Nine Public Lectures on the LAW OF CONTRACTS, the subjects to be treated in which will be as under :—

Lecture I.—Remarks as to Contracts generally—their obligatory force, and classification.

Lectures II. and III.—Contracts of Record and by Specialty examined—Inquiry as to the operation of the doctrine of Merger, and of Estoppel.

Lectures IV. and V.—Of Contracts between Landlord and Tenant.

Lecture VI.—Of Simple Contracts, Written

and Oral—Analysis of a Simple Contract—the Request—the Consideration—the Promise.

Lecture VII.—Of Contracts void on the ground of illegality, and of fraud.

Lectures VIII. and IX.—The capacity of Contract—how affected by Infancy, Coverture, Mental Imbecility, or otherwise.

With his Private Class the Reader on Common Law proposes to discuss the Law of Contracts according to the plan above indicated. The Books to be principally made use of during this Course will be *Smith's "Lectures on Contracts," Chitty "on Contracts," Woodfall's "Landlord and Tenant."*

The Lectures on Common Law during the ensuing Educational Term will be delivered, and the Private Classes will meet, in the Hall of the Inner Temple as under :—

The Public Lecture on Monday in each week, at Two P.M. (The first Lecture to be delivered on the 15th January, 1855.)

The Private Class on Tuesday, Thursday, and Saturday mornings, from a quarter to Twelve to a quarter to Two o'clock.

By Order of the Council,  
(Signed) EDWARD RYAN,  
Chairman, pro tem.

Council Chamber, Lincoln's Inn,  
22nd December, 1854.

Note.—The Educational Term commences on the 11th January, and ends on the 30th March, 1858.

The several Readers will receive their respective Classes on the appointed days, commencing Monday, the 15th January.

#### NOTES OF THE WEEK.

##### COMMENCEMENT OF REAL ESTATE CHARGES' ACT.

IN our last Number we pointed out the state of the law on this subject up to the 31st Dec., 1854, and the change effected under the 17 & 18 Vict. c. 113, on the 1st instant; but in one part of the Article (p. 153, col. 2, line 20) the date is given as 31st Dec., 1855, instead of 1854. The mistake was obvious, and we scarcely need repeat that in preparing new wills, or adding codicils to those already executed, the Solicitors will bear in mind this alteration in the law, and provide expressly for the payment of mortgage-money out of the personal estate, where it is not intended to be chargeable on the property mortgaged.

##### LAW APPOINTMENTS.

William Digby Seymour, Esq., M.P. for Sunderland, has been appointed Recorder of Newcastle-upon-Tyne.

Mr. Frederick Baker, of Derby, has been appointed Clerk to the Burial Board for the parishes of All Saints, St. Alkmund, St. Mi-

chaal, St. Peter, St. Werburgh, Hitchwich, and Little Chester, in the county of Derby.

Mr. William Rogers has been appointed Clerk to the County Court of Calne, in the room of Mr. Samuel Hawkes Gabriel, resigned.

The Queen has been pleased to appoint Nathaniel Forte, Esq., Barrister-at-Law, to be a member of the Council of the Island of Barbadoes.

Her Majesty has also been pleased to appoint John Henry Fianiss, Esq., to be Receiver of

Registration Dues and Conservator of Mortgages for the Island of Mauritius.—From the *London Gazette* of 26th Dec.

#### NEW QUEEN'S COUNSEL.

Henry Ridgard Bagshawe, Esq., M.A., of the Chancery Bar has been promoted to the rank of Queen's Counsel. Mr. Bagshawe was called to the Bar by the Honourable Society of the Middle Temple, on the 25th Nov., 1825.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

#### Lords Justices.

*Haggitt v. Stiff.* Dec. 21, 1854.

AFFIDAVIT SWORN IN FOREIGN COUNTRY.—NOTARIAL CERTIFICATE.—CONSUL OR VICE-CONSUL.

On appeal from Vice-Chancellor Kindersley, order on the clerk of records and writs, to file an affidavit which had been sworn before a notary-public in the town of Geneva, Ontario County, New York, in the United States, to which there was appended a certificate of her Majesty's consul at New York, verifying the official character of the notary.

THIS was an application by way of appeal from Vice-Chancellor Kindersley, refusing to make an order on the clerk of records and writs to file an affidavit, which had been sworn before a notary-public at Geneva, Ontario County, State of New York, United States (reported *ante*, p. 150). It appeared that there was appended a certificate signed by her Majesty's consul at New York, that the signature of the notary in question was entitled to credit in all judicial proceedings in the United States, and the United States' consul in this country had informed the solicitor in the cause that notaries-public were authorised by law to administer oaths in law proceedings in the United States. The Vice-Chancellor held, that the affidavit must be sworn before a consul or vice-consul, under the 15 & 16 Vict. c. 86, s. 22.<sup>1</sup>

<sup>1</sup> Which enacts, that "all pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations, and attestations of honour in causes or matters, depending in the High Court of Chancery, and also acknowledgments required for the purpose of enrolling any deed in the said Court, shall and may be sworn and taken in Scotland or Ireland, or the Channel Islands, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any Judge, Court, notary-public, or person lawfully authorised to administer oaths in such county, colony, island, plantation, or place respectively, or before any of her Majesty's consuls or vice-consuls in any foreign parts out of her Majesty's dominions; and the Judges and other officers of the said Court of Chancery shall take judicial notice of the seal or signature, as the case may be, of

Nalder in support.

The Lords Justices said, that the authentication was sufficient, and directed the affidavit to be filed.

#### Vice-Chancellor Kindersley.

*In re Bailey's Settlement.* Dec. 14, 1854.

MOTION TO EXPUNGE SCANDAL FROM AFFIDAVITS AFTER ORDER ON PETITION.

An order having been made by consent for the appointment of new trustees on petition under the 13 & 14 Vict. c. 60, held that a motion would not be granted to expunge certain parts of the affidavits which had been filed as being scandalous and irrelevant.

It appeared on this petition under the Trustees' Act, 1850 (13 & 14 Vict. c. 60), for the appointment of new trustees, that an order had been accordingly made with consent.

Teed now moved to expunge certain parts of the affidavits which had been filed as being scandalous and irrelevant.

*Selwyn*, contra.

The Vice-Chancellor said, that although some portions were scandalous, yet after what had taken place they could not be expunged, but the motion would be refused without costs.

#### Vice-Chancellor Stuart.

*Alexander v. Hammond.* Dec. 21, 1854.

AGREEMENT FOR ALLOWANCE OF MOIETY OF MONEYS CLAIMED BY NEXT OF KIN TO PLAINTIFFS.—CHAMPERTY.

The defendant agreed to give the plaintiffs one-half of a sum of money to be recovered at Calcutta in consideration of their bearing all the costs of prosecuting his claim as next of kin of an intestate. The defendant's claim was established, but he repudiated the agreement: Held, allowing a demurrer for want of equity to a bill filed to

any such Court, Judge, notary-public, person, consul, or vice-consul attached, appended, or subscribed to any such pleas, answers, disclaimers, examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or other documents to be used in the said Court."

*enforce the agreement, that the agreement conferred no lien on the sum to be recovered, but only a legal right.*

*Quære, whether the agreement savours of champerty?*

It appeared that the plaintiffs had advertised for the next of kin of one Martin Hammond who died in 1794 at Calcutta, and that the defendant answered the advertisement and stated his willingness to allow them one-half of the sum to be recovered for their trouble, and an agreement was accordingly executed in February, 1854, whereby the defendant agreed to allow the plaintiffs one-half of the amount in consideration of their bearing all the costs of prosecuting his claim. The defendant was proved to be next of kin, and gave a power of attorney to the Calcutta agents of the plaintiffs' solicitor to receive the moneys, which were remitted to this country by a bill on the Agra Banking Company. This suit was now instituted, on the defendant refusing to carry out the above agreement, to obtain a declaration that the plaintiffs were entitled to a moiety of the sum recovered, and for an injunction to restrain the defendant from obtaining possession of the bill.

Bacon and Erskine appeared for the defendant, in support of a demurrer for want of equity; *Molins and Bilton*, contra.

The Vice-Chancellor said, that without deciding on the question, whether the agreement savoured of champerty, it did not give the plaintiffs any lien on the sum to be recovered, but a purely legal right. The demurrer would therefore be allowed,—no order as to costs.

*Andrews v. Morgan.* Dec. 21, 1854.

ORDER AS TO COSTS, WHERE REFERENCE TO ARBITRATION OF PARTNERSHIP ACCOUNTS.

*In a suit between partners for an account, an order was obtained before answer for an injunction to restrain any dealing with the partnership property, and referring the accounts to arbitration, the defendant paying a sum into the bank pending the reference: Held, that the Court would make an order as to costs, although the award was in the plaintiff's favour.*

It appeared in this suit, which was instituted between partners for an account, that the plaintiff had, before the defendant had answered, moved for an injunction to restrain any dealing with the partnership estate, and obtained an order referring the accounts to arbitration, and for the defendant to pay a sum of money into the bank pending such reference.

Law now appeared in support of this petition, asking for the costs of the reference and of the award, upon the award being in the plaintiff's favour.

The Vice-Chancellor (without calling on W. W. Cooper for the defendant, contra) said, that the question of costs was for the discretion of the Court, and could only be dealt with where

incidental to the subject-matter of a suit. In the present case the Court knew nothing of the conduct of the litigant parties, and no order would therefore be made.

Vice-Chancellor Stuart.

*Christie v. Cameron.* Dec. 20, 1854.

ENTERING APPEARANCE FOR DEFENDANT.—SUBSTITUTING SERVICE ON SOLICITOR.

*Order for leave to enter an appearance for the defendant, who was keeping out of the way, and whose address could not be ascertained, and to substitute service of all future proceedings on his solicitor, who had admitted he knew where the defendant could be met with.*

THIS was a motion for leave to enter an appearance for the defendant in this suit, who was keeping out of the way and whose address could not be ascertained, and to substitute service of all future proceedings on his solicitor.

Bowring in support on an affidavit that the solicitor had admitted he knew where the defendant could be met with.

The Vice-Chancellor made the order as asked.

Court of Queen's Bench.

*Wilkins v. Smith.* Nov. 10, 1854.

ACTION AGAINST INFANT FOR NECESSARIES. ACKNOWLEDGMENT.—STATUTE OF LIMITATIONS.

*To an action for goods sold and delivered, the defendant set up the Statute of Limitations, and on the plaintiff replying a promise to pay within six years, the defendant alleged by rejoinder that he was an infant when the same was made. The surrogate set up that the defendant was an infant, both when the goods were delivered and when the promise was made: Held, that as for the purposes of a demurrer to this rejoinder, the goods must be taken to be necessities, the plaintiff was entitled to recover.*

THIS was an action for goods sold and delivered, to which the Statute of Limitations was pleaded, and the plaintiff replied, that the defendant had promised to pay within six years before action commenced. The defendant rejoined, that at the time of making such acknowledgment he was an infant. The case now came on for demurrer to the surrogate, that the defendant was an infant both when the goods were delivered and when the acknowledgment was made.

R. Malcolm Kerr in support.

The Court (without calling on Fisher for the plaintiff, contra) said, that for the purposes of the demurrer the debt must be taken to be for necessities. As, therefore, he was in a condition to make the original contract he was of sufficient capacity to acknowledge the contract, and the plaintiff was entitled to judgment.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—"Still attorneyed at your service."—Shakespeare.

SATURDAY, JANUARY 13, 1855.

### JOINT-STOCK EXECUTOR AND TRUSTEE COMPANY.

#### PRIVATE BILL FOR INCORPORATING THE COMPANY AND ALTERING THE LAW RELATING TO TRUSTEES.

THE promoters of the Joint-Stock Executor and Trustee Company have again brought forward their project in the form of a *Private Bill* in the House of Commons. We hear nothing of the South Sea Company Trust Bill, and presume, therefore, that its Directors have determined to wind up their own affairs without further delay. The South Sea Directors, including the Honourable Mr. Bouverie, were an influential body, and the large capital they proposed to reserve as a guarantee fund was calculated to attract a considerable share of public confidence. The money was already in hand, and might be readily transferred to the proposed trustees. The objections to the plan were, however, deemed insuperable, although the promoters offered to modify their Bill in every possible way to satisfy the Select Committee of the House of Lords.

The first objection to all measures of this kind rests upon legislative grounds, entirely independent of the utility or "merits" of the case. Admitting, even for the sake of argument, that the powers sought for are necessary or useful to the public, still the matter should be introduced to Parliament in the form of a *Public Bill*, because, in order to confer such powers, the present state of the general law must be altered. Moreover, if it be just or expedient to alter the law in any respect, the object should be effected, not in *favour* of this peculiar Company for the pecuniary advantage of

its shareholders, but by amending the Law relating to Executors and Trustees generally,—whether such executors or trustees are few or many,—whether three or four in number or more,—or a numerous body of shareholders in a Joint-Stock Company, or the Directors who represent the Company. If the proposed Executor and Trustee Society, by its "executive council" of twelve, are to be entitled to receive a commission on the trust property, whether on the gross value of the whole estate, or the annual proceeds, why should not the Directors of the several Insurance Societies be equally entitled to similar emoluments, such as the Law Life, the Legal and General, the Law Fire, the London and Provincial, and other well-known institutions, who, having an established office of business, governed by Barristers and Solicitors as proposed in the new Society, are able to conduct the trust affairs (if proper to be delegated to a public board) with facility and advantage? Again, if public companies are to have the benefit of a change in the law, why should not bankers and solicitors, many of whom fill the offices of executors and trustees?

For these reasons, it seems manifest that so important an alteration in the law as that proposed, should not take place under colour of a private Bill, but should be submitted to Parliament with the safeguards which attach to a public Act,—the various stages of which must again and again appear in the votes and proceedings of both Houses.

These private Bills are not sent even to the members of Parliament, as are all public Bills, and may therefore pass through their several stages without due attention, for it may reasonably be supposed that such private Bills relate only to private rights and

interests, and that the law officers of the House will take care that there is no infringement of private or individual rights. It is no part of the duty of those officers to take objections to the measure on public grounds. They, of course, leave to the patriotic spirit of our representatives the discovery of any public objections, and the duty of bringing them forward to the notice of Parliament.

We have reason to believe that the sense of Parliament will be taken on the preliminary question of proceeding (if at all) by a public instead of a private Bill. The grounds on which the efforts of last Session were successfully resisted, will, however, equally apply, whether the course to be taken be in the form of a public or private Bill, and we shall take an early opportunity of recalling the attention of our readers to the several objections which were then urged against intrusting a board of directors, committee of management, or "executive council," of a joint-stock company with the administration of family trusts or the management of co-partnership affairs arising on the decease of bankers and merchants.

It may not be improper to notice that the proposed governing body named in the present Bill is much diminished in importance and strength when compared with that of last Session. The following distinguished persons appear to have withdrawn, at least, from the direction:—Earl Zetland; Mr. Headlam, M.P.; Mr. M. C. Chase; Mr. Charles Clark, the Barrister; Mr. J. Constable; Mr. J. P. Macdougall; Mr. H. Morris; Mr. J. Carnac Morris; and Sir Sir Sibbald D. Scott, Bart. Whilst the only substituted name is that of Mr. Thomas Norton.<sup>1</sup>

In the first prospectus of the company, we believe, the honoured name of Sir John Patteson appeared as one of the trustees or directors; it was not, however, included in the Bill, but he was examined as a witness in support of the measure. These alterations in the proposed governing body are significant of doubts and difficulties in carrying the plan into effect.

Seeing that copies of the Bill can only be obtained through favour of the promoters, we deem it expedient to set forth the clauses *in extenso* for the information of our readers,—many of whom would otherwise have no opportunity of considering the

powers proposed to be conferred on this joint-stock company, and the consequences which may result both to the Public and the Profession, if the law be altered as proposed.

#### CONSTITUTION OF THE COMPANY.

THE preamble recites that it is desirable that a corporate body should be established for the security and management of testamentary and trust property, but the same cannot be effectually done without the aid of Parliament. It is therefore proposed to enact as follows:—

1. James Burchell, Montagu Chambers, John Chevallier Cobbold, Oliver Hargrave, James Peard Ley, George Norton, Thomas Norton, Charles Gipps Prowett, Philip Twells, Henry Ward, and Josiah Wilkinson, and all other persons and corporations who have already subscribed or shall hereafter subscribe to the undertaking hereby authorised, and their executors, administrators, successors, and assigns respectively, shall be united into a society or company for the objects herein provided for, and such society or company shall be incorporated by the name of "The Executor and Trustee Corporation," and by that name shall be a body corporate with a perpetual succession and a common seal, and shall have power to hold lands devised, conveyed to, or vested in them for the purposes of this Act.

2. In citing this Act in other Acts of Parliament, and in legal instruments and pleadings, it shall be sufficient to use the expression "The Executor and Trustee Corporation Act, 1855."

3. In the construction and for the purposes of this Act—

The term "real property" shall include all freehold, copyhold, customary and other hereditaments and heritable property, whether corporeal or incorporeal, and any estate and interest other than a chattel interest therein; The term "personal property" shall include all property not comprised in the preceding definition of real property;

The term "property" alone shall include real property and personal property;

The word "administrator" shall mean any person to whom administration of the personal property of a deceased person shall have been committed by any Court of competent jurisdiction, with or without a will annexed;

The term "settlor" shall mean any person creating a trust or receivership of property;

The term "settlement" shall mean any instrument creating a trust or receivership of property;

The term "trust" shall include executorships, administratorships, and receiverships.

4. The provisions of "The Companies' Clauses' Consolidation Act, 1845," (except the clauses with respect to the borrowing of money by the company on mortgage or bond,) shall be incorporated with and form part of this Act; and the term "the Directors," whenever

<sup>1</sup> The remaining names will be found at p. 191, *post*.

it is used in "The Companies' Clauses' Consolidation Act, 1845," shall mean the "Executive Council" as constituted by this Act.

5. The capital of the company shall be one million pounds.

6. The said capital shall be divided into fifty thousand shares, and the amount of each share shall be 20*l*.

7. Two pounds per share shall be the greatest amount of any one call which the company may make on the shareholders, and three months at least shall be the interval between successive calls.

#### EXECUTIVE COUNCIL.

8. The number of members of the executive council shall be eleven, and the qualification of a member thereof shall be the possession in his own right of one hundred shares in the undertaking.

9. It shall be lawful for the company to increase the number of the executive council, provided the increased number shall not be more than twenty-four.

10. James Burchell, Montagu Chambers, John Chevallier Cobbold, Oliver Hargreave, James Peard Ley, George Norton, Thomas Charles Gipps Prowett, Philip Twells, Henry Ward, and Josiah Wilkinson shall be the first members of the executive council of the company to direct and manage the affairs thereof.

11. The first ordinary meeting of the company shall be held within six months after the passing of this Act.

12. The quorum of a meeting of the executive council shall be five.

13. The number of members of which committees appointed by the executive council shall consist shall not be less than three nor more than five, and the quorum of each committee shall be three.

#### POWERS OF THE COMPANY.

14. It shall be lawful for the company, and it is hereby empowered, to accept, manage, and execute trusts of any property vested in or transferred or conveyed to them under settlements, wills, or other instruments, and to accept and execute the office of executor under wills, and of administrator of the personal estates of intestates, and of receiver of any property, and for any of those purposes, to accept, take, and hold real property: provided always, that nothing herein contained shall prejudice or affect the rights of the Crown in such real property upon any estate of the beneficial interest therein.

15. The executive council may from time to time appoint any person or persons to act as official executor on behalf of the company in any of her Majesty's dominions, and may at pleasure remove the person or persons so appointed, and appoint another person or persons in his or their place, and the rights or powers of any such person or persons shall on his removal absolutely cease.

16. When any property comprised in any trust accepted by the company shall consist of

copyhold lands, or where the company shall purchase copyhold lands in pursuance of the powers hereby given, the lord of the manor of which such lands are held shall admit the nominee of the company as tenant in respect of such lands, and such admission shall enure to the nominee of the company for the time being, and such fines and heriots shall be thereupon paid and rendered and such services performed as in the case of an admission of ordinary trustees.

17. Any Court or Judge having the grant of probate and of letters of administration in any of her Majesty's dominions may, if the company or the official executor thereof shall be named as executor in any will, grant the probate of such will either to the company or to the official executor appointed for, and resident within, the jurisdiction of the Court making such grant; and such Court or Judge may, on the application of the person or persons entitled by law to take out letters of administration to any person dying intestate, or who having left a will has omitted to appoint executors, or whose appointed executors have died or renounced probate, grant administration, general or special, of the personal property of such person to the company or its official executor; and the company may thereupon give any bond usual on the grant of administration for the due administration of the property of such intestate, which any such Court may accept without surety; on any such grant of probate or administration to the official executor of the company the personal property of the testator or intestate shall vest in the company, and the company shall be liable for the administration of such property, and all actions and suits in reference to such property, or the administration thereof, shall be brought against the company as if it were the executor or administrator of such testator or intestate.

18. Any Court or Judge in any of her Majesty's dominions, now or hereafter having jurisdiction in that behalf, may appoint the company to be the committee or receiver of any property, in order to the same being managed by the company under the direction of such Court or Judge.

19. Where the person to whom any property shall have been devised, bequeathed, transferred, or conveyed upon any trust shall die, or refuse or decline, or be incapable, to accept the same, or having accepted the same shall die intestate or become incapable of acting therein, or be removed, and in all cases in which any Court or Judge in any of her Majesty's dominions now has, or hereafter may have, jurisdiction to appoint a new trustee, such Court or Judge, on an application to be made by petition in a summary manner by any person beneficially interested, may appoint the company to be trustee of such property, whereupon the same shall vest in the company, upon the trusts to which the same is then liable.

20. It shall and may be lawful for all trustees, executors, administrators, and receivers, unless the instruments from which they derive



their powers shall expressly direct otherwise, with the assent of the company, and either with the assent of the parties beneficially interested, if they should be all *sui juris*, or with the consent of any Court or Judge aforesaid having jurisdiction in that behalf, on an application by petition to be made in a summary manner by any such trustee, executor, administrator, or receiver, or any *cestui que trust*, to convey and transfer to the company by deed duly stamped all the property held by them, to be held by the company on the trusts then subsisting therein; and upon such conveyance or transfer being executed, the appointment and duties of such trustees, executors, administrators, and receivers, shall wholly cease and determine, and the company shall become and be trustee, executor, administrator, or receiver in their stead; and such trustees, executors, administrators, and receivers shall thenceforth be indemnified against any claim in respect of the future management and administration of the property so conveyed and transferred: provided always, that any proceedings pending by or against any such trustees, executors, administrators, or receivers shall not abate by reason of any such transfer or conveyance; but the company may be made a party to such proceedings, on application to the Court in which they are pending: Provided also, that the company shall not on such conveyance or transfer become responsible for any breach of trust or devastavit theretofore committed by any such trustees, executors, administrators, or receivers.

21. In all cases in which such transfer as aforesaid shall be made by executors or administrators, notice thereof shall be given by the company to the registrar of the Court by which such probate has been granted, or such letters of administration issued, and the registrar shall endorse a certificate of the same upon such probate or letters of administration, and shall register the same in the register of such Court; and such certificate, purporting to be signed by such registrar, shall be evidence for and against the company in any proceeding in any Court.

22. In all cases wherein the company may be party to or interested in any proceeding in any such Court as aforesaid, the Court wherein the same may be pending may make such order as to the payment of the costs of and incident to such proceeding out of the property affected by such order, or otherwise, as it may think just and proper.

23. The executive council shall have full power in their discretion either to accept or to refuse any trust which may be offered to the company for execution, and may on any such refusal disclaim the trust or renounce probate of the will creating it.

24. Upon the acceptance of any trust by the company, the whole funds belonging to the company, not held by them upon any trust, and the whole amount of their subscribed capital, shall be liable for the due performance of such trust; and the company shall be liable to be sued for and in respect of any breach of

trust by it committed or loss of property to it confided, in the same manner and to the same extent and under the same circumstances as any individual trustee or trustees, but no further or otherwise.

25. The company shall keep distinct accounts in their books as to each trust undertaken by them, and each such account shall be accessible only to the executive council and the auditors and officers of the company, to the parties interested therein, and to any committee appointed by the shareholders of the company at a general meeting: provided always, that the company may lend money belonging to two or more trusts on the same real security in Great Britain or Ireland, but shall on each such loan execute a deed poll signifying the proportion of the money so lent which belongs to each trust.

#### GUARANTEE FUND.

26. It shall not be lawful for the company to undertake any trusts until they shall have satisfied the Lords Commissioners of her Majesty's Treasury that the subscribed capital of the company amounts to 500,000*l.*, and that (exclusive of any other property of the company) the company has transferred in the books of the Governor and Company of the Bank of England into the joint names of the said Commissioners and of the company, or have deposited or caused to be deposited in such joint names, Parliamentary Stocks or Funds or Government securities to the amount of 200,000*l.*; and such stocks, funds, or securities shall be called "The Guarantee Fund" of the company; and the said fund, and all other the property and effects of the company, and the amount of subscribed capital not paid up, shall be subject and be in all respects liable for the due performance of all trusts undertaken by the company, and shall and may at all times be subject to be applied by the company for the purpose of paying or discharging any money or liabilities which the company may have become liable to, or any trust, act, matter or thing undertaken by the company, or transacted, done, or omitted to be done with respect to any such trust, or otherwise under the provisions of this Act.

#### GOVERNMENT INSPECTOR.

27. After the said Commissioners of the Treasury shall have been satisfied of the investment as aforesaid of the Guarantee Fund, it shall be lawful for the said Commissioners from time to time to appoint a person to act as inspector, to be called "the Official Inspector," and such person shall have access to all the accounts, officers, and servants of the company, for the purpose of ascertaining the dealings with the trust funds, and the investment thereof, as well as the dealings with and investment of the property beneficially possessed by the company; and the said official inspector shall make such reports and furnish such accounts to the said Commissioners as they shall from time to time direct, and he

shall be paid such salary by the company, not exceeding 200*l.* per annum, as the said Commissioners shall determine; and the right of such inspector to inspect such accounts and perform such duties may be enforced, either by summary application to her Majesty's Court of Queen's Bench at Westminster, or to her Majesty's High Court of Chancery, which Courts are authorised to make such order in the premises as may be thought fit, and to direct the costs of every such application or order to be paid to the inspector so applying.

28. Upon its being made to appear to the said Commissioners, by the report of the said official inspector or otherwise, that the said stocks, funds, and securities so forming the Guarantee Fund are of less amount than is hereinbefore provided, it shall and may be lawful for the said Commissioners to give notice to the company not to undertake, and the company shall upon such notice cease to undertake, any fresh trust until the said stocks, funds, and securities shall be made up to the full amount aforesaid.

29. If the said Commissioners shall, upon the report of the said official inspector, or otherwise, be of opinion that, having regard to the amount or value of the said Guarantee Fund, and to the nature and extent of the trusts then already undertaken by the company, no further trust ought to be undertaken by the company, unless and until such addition to the Guarantee Fund as the said Commissioners may require for the due performance thereof shall be provided by the company, it shall be lawful for the said Commissioners to direct that no further trust shall be undertaken until the said Guarantee Fund shall be increased as the said Commissioners shall direct.

30. If the Guarantee Fund shall not for the space of six calendar months from the report of the aforesaid inspector, showing such diminution as aforesaid, be made up to the full amount aforesaid to the satisfaction of the said Commissioners, or if there shall be any decree of a Court of Equity against the company for fraud or malversation as regards any trusts undertaken by the company, then it shall be lawful for the Court of Chancery, on a summary application by the Attorney-General, or in any suit then pending, to order the estate and effects of the company to be sold and its affairs wound up, and the produce (after payment of all costs incidental to such sale and winding-up) applied rateably in respect of any claims against the company by reason of any trusts undertaken by the company; and, subject as aforesaid, the produce of the estate and effects of the company shall be divided rateably amongst the shareholders of the company according to their shares in the capital thereof; and in case the company shall be wound up as last aforesaid, it shall be lawful for the said Court to make such orders concerning the respective trust properties then held by the company as the said Court shall deem expedient, either upon the summary application of any

person interested in any such trust properties or otherwise.

#### PAYMENT OF COMMISSION TO THE COMPANY.

31. With respect to any trusts not transferred from other trustees of which the company shall accept the execution, the trust property subject thereto shall be charged with and liable to pay to the company, in addition to such costs, charges, and expenses incurred by them in the administration of the trusts reposed in them as trustees or executors are in the like cases in ordinary entitled to be reimbursed, a reasonable commission for the security afforded by the capital of the company and the risk and trouble to which the company may be put in the management of the trust property and the execution of the trusts thereof; and such commission may be agreed upon between the executive council and the settlor, testator, or next of kin of any intestate; or in case no such agreement is made, then such commission shall be after such rate as shall at the time of the acceptance by the company of any trust be actually provided by any bye-law of the company or general resolution or regulation of the executive council sanctioned by the Board of Trade, and no *cestui que trust* or other party interested in the trust property shall be at liberty to object to the payment or deduction from the trust property or the income thereof of such commission.

32. With respect to any trusts transferred from other trustees to the company, the commission, in addition to such costs, charges, and expenses incurred by them in the administration of the trusts reposed in them as trustees or executors are in the like cases in ordinary entitled to be reimbursed, shall be of such amount as shall be agreed upon between the executive council and the persons beneficially interested if *sui juris*, or if incapacitated as shall be approved by the Court or Judge consenting to the transfer.

#### PLACE OF BUSINESS AND MANAGEMENT.

33. The principal place of business of the company shall be in London or Westminster; but branches may be established elsewhere in her Majesty's dominions at the discretion of the executive council, and the executive council may, if they shall think fit, purchase or hire, or take on building lease or otherwise, any buildings or lands for the purpose of building or making offices, and again sell the same buildings or lands, or any part thereof, and purchase, hire, or take on building lease or otherwise any other buildings or lands, as often as they the executive council shall think fit; and for these purposes the executive council may enter into and execute all such agreements, deeds, covenants, and instruments as may be necessary, which shall be binding upon the company.

34. The executive council shall from time to time appoint fit and qualified persons to be respectively the secretary, assistant, or legal so-

cretary, treasurer, bankers, solicitors, and other officers of the company, or acting for the company, and employ or hire as many agents, clerks, and servants as the business of the company shall from time to time require, and subject to the provisions of this Act, impose on them respectively such duties, and give them respectively such powers and authorities legally tenable by them respectively, as the executive council shall think fit and circumstances shall require, and allow and pay to them respectively, and also to all agents to be appointed as hereinbefore provided, out of the company's funds, such respective salaries, wages, and remuneration as the executive council shall think fit, and dismiss or remove at pleasure as well all such persons presently appointed, employed, or hired, as those hereafter to be appointed, employed, or hired, and appoint, employ, or hire others in their stead; and all such persons on dismissal shall forthwith and without the necessity for any legal application deliver up to the executive council, or to the appointed agent of such council, all papers and documents then in their hands relating to the business in which they have been employed, and shall in like manner, within a reasonable time to be fixed by the council, deliver up all property held by them in virtue of their employment; and for neglect thereof the company may proceed against such person before any Court or Judge in term or vacation by summary process in the nature of an attachment.

35. The executive council may appoint any number of persons in any city or town in the United Kingdom, or elsewhere in her Majesty's dominions, to be a local committee or board of management, with such powers (being powers legally conferable) as the executive council may from time to time confer on them, and the executive council may remunerate or remove at pleasure all or any of the members of such local committee or board.

#### SERVICE OF PROCESS.

36. Any summons or notice, or any writ or other proceeding at Law or in Equity, relating to any matter or property arising or situate in any part of her Majesty's dominions abroad, for which an official executor shall have been appointed by the company, may be served by the same being given personally to such official executor.

37. The costs of obtaining this Act and preparatory and incidental thereto shall be paid by the company.

### LAW OF ATTORNEYS AND SOLICITORS.

#### TAXATION OF BILL OF COSTS OF MORTGAGEES' SOLICITORS, AFTER PAYMENT.

In December, 1852, Mrs. Barton, who was entitled to a leasehold estate subject to a mortgage, was desirous of having it trans-

ferred to Mr. Hayward, a solicitor, as trustee for her, and the draft was accordingly prepared, and was perused and approved by Messrs. Finch and Shephard, the mortgagees' solicitors. After the deed had been executed, Messrs. Finch sent their bill of costs, amounting to 18*l.* 14*s.* 2*d.*, to Mr. Hayward's agent, and an appointment was made to complete two days afterwards. On that day, Mr. Hayward's clerk settled the amount of the principal and interest with Mr. Shephard, and then tendered the same, together with 10*l.* for the costs of transfer, making some objections to the bill of costs. Mr. Shephard received the amount tendered, but told the clerk he received it on account of principal, interest, and costs, that if it were paid on account of Mrs. Barton, he was entitled to six months' interest in lieu of notice, and if on account of Mr. Hayward, he was not bound to make the assignment unless the costs were paid; and he accordingly retained the deeds claiming a lien for the balance. The clerk, on the same day, again called, and paid the balance, without in terms repeating his objections to the bill, but said he should take such steps as he might be advised. A petition for taxation was afterwards presented, but was dismissed by the Master of the Rolls with costs, from which Mrs. Barton appealed.

Lord Justice Turner said :—

"It is to be observed in the first place, that no case is made by this petition for the purpose of showing that the mortgagees were not entitled to the six months' interest in lieu of notice, which was claimed by Mr. Shephard, or that they were bound to transfer to Mr. Hayward upon any other terms; and the petitioner, by the payment of the small amount of costs which is in question, has had at least the benefit of this right on the part of the mortgagees not being insisted upon. If she had not paid the 8*l.* 14*s.*, this right might have been insisted upon, and for all that appears on this petition have been maintained by the mortgagees. The case, therefore, in this respect is by no means favourable to the petition. By payment of the bill, she has secured to herself a benefit at the expense of the mortgagees, and she is now endeavouring to undo the payment by means of which she acquired the benefit.

"It is further to be observed, that this petition and the affidavits by which it is supported, are most guardedly prepared. It does not appear either from the petition or from the affidavits what was the objection taken by Mr. Hayward's clerk to the bill of costs, upon the 20th of December. From what does appear, I strongly suspect that his objection was, not that the costs in question were not due from the petitioner, or that the charges were unrea-

sonable, but that they were not costs which the petitioner was bound to pay upon the transfer of the mortgage; and if this was the objection, it was clearly wrong, as the mortgage was to be transferred in trust for the petitioner. What pretence was there for taking the deeds out of the hands of these solicitors, leaving any costs which were due to them by the petitioner unpaid?

"If it had been necessary to decide this case upon either of these points, I should have hesitated long before making an order for taxation, but there is another point in the case, which appears to me to be decisive against the petitioner. Special circumstances are always necessary to found an order for the taxation of a bill after payment, and it has been held, and in my opinion most properly held, in all the cases, that whatever other special circumstances may be required to ground the order for taxation after payment, there must at least be proof that there are overcharges in the bill, whether amounting to fraud or not is not material to the present case. Now the allegation of this petition (and the affidavits in support of the petition follow the allegation) is simply this, that the items and charges which are complained of are not such as the petitioner was bound to pay upon the transfer of the mortgage, not that the business to which the items refer was not done, or that if done, the charges for it were unreasonable; and, so far from there being any proof of these essential circumstances, there is evidence, in opposition to the petition, that if a detailed bill had been made out, the charges would have exceeded the amount of the item particularly complained of.

"In this state of circumstances, I think it was the clear duty of the Court to refuse the order for taxation, and that this petition of appeal must therefore be dismissed." *In re Finch and another, ex parte Barton*, 4 De Gex, M'N. & G. 108.

## KINGSTON-UPON-HULL SESSIONS.

### JUVENILE OFFENDERS.—REFORMATORY SCHOOLS.—THE RECORDER'S CHARGE.

ON Thursday the 28th December, the usual forms of the Christmas Quarter Sessions having been gone through,

Mr. Warren, Q. C., the Recorder of the Borough, charged the Grand Jury as follows:—

"Gentlemen of the Grand Jury,—Ever since I last sat here, I have been longing to see in your weekly organs of intelligence an announcement that a beginning had been made in good earnest—one worthy of this popular and important borough—to establish reformatory schools for juvenile criminals. But I have looked in vain. Nevertheless, I believe that there is a noble Christian feeling here on the subject—a true and high philanthropy, not evaporating in words, but manifesting it by

acts. Does not the necessity continue urgent? I have here a heavy calendar again before me; and a letter which I received from the governor of the gaol, shortly before I left London, in answer to inquiries of mine, as to the state of the gaol, ends with this melancholy and afflictive sentence:—

"It is a lamentable fact, that the juveniles under 17 years of age have increased to nearly double the average number during the last five months! Indeed, there are two only 11 years of age?"

"If no steps have been taken in the borough towards meeting the advance of the Legislature in the last session, I can but express deep concern, and earnestly echo the recently uttered language of Lord Brougham—the most illustrious law reformer of his age, and ever foremost in anything calculated to advance the higher interests of society—'I hope and trust,' he says, 'that the war will not, among its other evils, occasion obstruction in either country—France or England—to any of those great plans of benevolence—let me rather say, beneficence.' He was writing on the subject of reformatory schools. My excellent friend the Recorder of London, in his last charge to the grand jury, took occasion to express regrets similar to mine on this occasion, that the great county of Middlesex had not come forward, as I am now imploring you to come forward, to arrest the foul torrent of juvenile crime; and at the late Winter Assize for this county, I am assured by those who were present, Mr. Baron Alderson delivered an eloquent, a most impressive and awakening charge to the grand jury, on the all important topic which I am now urging again upon your attention. I believe that every gentleman whom I am now addressing, is listening, in an enlightened and considerate spirit, to what I am now too feebly saying, and also feels that public duty is knocking loudly at the door of his heart and conscience.

Gentlemen, in the course of my legal readings, a few days ago, I suddenly stumbled on a very affecting and remarkable passage, which I had never seen before, in one of the writings of him whom we lawyers call our great master, Lord Coke. Writing two centuries ago, he concluded his last great 'Institute,' with the words, 'Blessed be the amending hand!' which he addressed to 'the wise-hearted and expert builders of the laws, to amend both the method or uniformity of them, and the structure itself, wherein they shall find either want of windows, or sufficient lights, or other deficiencies in the architecture whatsoever.' But the passage to which I more particularly refer, occurs in the epilogue to his 'Third Institute;' and it does eternal honour to the memory of that mighty lawyer.

"Justice," he says, 'is justice severely punishing, and justice truly preventing. True it is, that we have found by woful experience, that it is not frequent and often punishment that doth prevent like offence! Those offences

are often committed, that are often punished: for the frequency of the punishment makes it so familiar, as it is not feared. For example: what a lamentable case it is to see so many Christian men and women strangled on that cursed tree of the gallows; inasmuch as, if in a large field, a man might see together all the Christians that but in one year, throughout England, came to that untimely and ignominious death—if there were any sparks of grace, or charity in him, it would make his heart to bleed for pity and compassion! But here I leave to divines, to instruct the inward man: who, being well instructed, the outward man will be the easier reformed.

“This *preventing* justice consisteth in three things:—First, in the good education of youth, and that both by good instruction of them in the grounds of the true religion of Almighty God, and by learning them knowledge of trade, in their tender years, so as there should not be an idle person, or a beggar, but that every child, male or female, whose parents are poor, might, at the age of seven years, earn their own living:—and this, for the time to come, would undoubtedly, by *preventing* justice, avoid idleness in all (one of the foul and fatal channels that lead into the very Dead Sea) and by honest trades, cause them to become good members in the commonwealth. Secondly, preventing justice consisteth in the execution of good laws. True it is there be good laws already to punish idleness, but none of sufficient force or effect to set youth, or the idle, on work. Thirdly, that forasmuch as many do offend in the hope of pardon, that pardon be very rarely granted.

“But the consideration of this preventing justice were worthy of the wisdom of a Parliament; and in the meantime, expert and wise men to make preparation for the same. Blessed shall he be that layeth the first stone of this building; more blessed that proceeds in it: most of all that finisheth it to the glory of God and the honour of our king and nation.”

“Gentlemen, these are grains of gold—the pure ore of philanthropy—dug out of the old ragged black letter, and I commend them to your reflections. The first stone of the building has been laid in Parliament; let us now, in Lord Coke’s language, uttered 200 years ago, proceed in it, and finish it, to the glory of God and the honour of our Queen and nation. Let it not be recorded that the Parliament relied on our voluntary co-operation in vain, and were at length obliged to have recourse to compulsory action.

“And now let us hear a commentary on this touching passage of old Lord Coke, by a pious and humane chaplain of 1854—the chaplain of our gaol, in his report to the magistrates this day:—

“It is painful, again, to mention the great number of juveniles, that from month to month are committed to prison. Since the 1st January last, the number has been 133, of whom 37 have been committed since my last report. The greater part of these youths come to me on the Sunday morning for an hour before chapel time, to read the Scriptures and receive religious instruction. About a month ago I had 23 on Sunday morning for this purpose; and, from inquiry, I found that only eight of them had not been in gaol before; seven had been in once, one three times, one four times, and one 16 times. Seven of them were not able to read, and knew little more than the Lord’s Prayer, and some of them could not repeat even that correctly. Many of those who have been to schools do not keep up the ability to read and write, and their attendance at a place of worship on a Sunday is a thing of rare occurrence. They thus lose their knowledge of religious phraseology, as well as of religion itself, and are easily led to think that the knowledge of the commands of God, as contained in the Bible, is not necessary to their present or future welfare; and to this is, I think, to be traced, in a great measure, their present reckless conduct.”

“This, I repeat, is your worthy chaplain’s mournful but awakening commentary on Lord Coke.

“Gentlemen, I venture to throw out for the consideration of the authorities of this borough, and of all interested in its welfare, whether they have not admirable facilities and opportunities for establishing a maritime school, for the hitherto neglected classes, such as I believe exists in Germany, if not also elsewhere on the continent. There, I believe, such an institution is attended with the very best effects. At a place 20 or 30 miles from the sea, they have an establishment for teaching poor boys, chiefly by means of a great model of a ship (as in the Royal Naval School at Greenwich), the elementary and practical duties of seamanship, as well as a little other useful knowledge; so that when old enough to go to sea, they are sufficiently trained and competent to undertake regular ship duty, and escape being cabin-boys. Now, if this humane and wise system can be so successfully used so far inland, what are not your facilities? How easy it would be to make a beginning here, and gradually excite an *esprit de corps* and emulation among the boys, which would soon reach their parents and friends; and how delightful to the feelings of the gentry of Hull to find the maritime school increasing in numbers; as the cells of the prison become proportionately untenanted! What facilities exist for training hardy young sailors, in your very presence, to handle ropes and climb the rigging, instead of picking oakum and treading the dreary and degrading treadmill! Why not

make a reformatory beginning here? It would be popular, I do believe, or the humbler classes here have not that kind and humane feeling for which at present I do heartily give them credit. It would be an act which the country at large would applaud, as soon as they heard of it; and say, that Hull has set a noble example to her sister ports in Great Britain! Let Hull have that honour.

"Gentlemen, there is another subject to which I must briefly refer, in connexion with something which has occurred here since the last session, and relating to the administration of justice here. I was deeply concerned to be informed that one or two gentlemen have expressed anxiety that criminal cases here should be disposed of a great deal more rapidly than I think is consistent with the due administration of justice. If I am correctly informed, some one spoke with admiration of having 'seen a man tried, convicted, and sentenced to transportation, all in 10 minutes!' and another said the Recorder could prevent the sessions being lengthened, by keeping counsel to the point and getting through a case in three minutes."

"Gentlemen, when I took my seat first in this chair, I stated, quoting language with which I would hope we are all familiar, that I would uniformly strive 'truly and indifferently to minister justice, to the punishment of wickedness and vice, and to the maintenance of true religion and virtue.' This cannot be done but with gravity, circumspection, and deliberation; and all I shall think fit to say here on this subject is, that if you will go to your prison, when these sessions are over, I do not think you will find a prisoner there who will not freely own that he or she has been fairly and patiently tried. Some of those with whom I have been forced to deal most severely have said as much to myself often, when afterwards visiting them in goal, and to others, who can testify it; and I can conscientiously say that no man, woman, or child—*alas* that I should have to say *child*—ever stands at that Bar whom it is not my humble endeavour to try as fairly, and look into his case as thoroughly, as I would desire to be done in my own case as if, unfortunately, our positions were reversed. What irreparable injustice may be done in the three minutes in which it is imagined a person may be tried, convicted, and consigned to infamy and agony in a foreign land during a long period of his life! No, gentlemen, as long as I sit here, with God's blessing, I will hold the scales of justice calmly and steadily, and watch the inclination of them towards guilt, or innocence, with unfaltering steadfastness and deliberation. For rough and ready justice, as it is called, I always entertained, and do entertain, a horror. And as for my interfering with a prisoner's counsel, I cannot do so. My heart recoils from interrupting a gentleman to whom an unhappy prisoner has intrusted his character and liberty, and who has a most anxious duty to perform. The length at which this shall

be done must, however, be left to the discretion and taste of the counsel themselves.

"Gentlemen, both the criminal and civil business of this borough is much increasing, and I am, and always have been, delighted to do everything in my power to despatch both as quickly, but also as satisfactorily, as possible. My distinguished predecessor here, Mr. Justice Cresswell, was appointed recorder in 1831. The population was then 53,744. In the year 1833, the average number of criminal cases at each sessions was 29, with three appeals. In the year 1832, the civil business consisted of four cases for trial, and two writs of inquiry, in the whole year.

"Now, I was appointed in 1851; and then the population was increased by upwards of 30,000—that is, it was, 84,690. The average number of criminal cases for last year, each sessions, was 47, with one appeal; and in the same year there were 13 civil causes tried, and one writ of inquiry. Thus you see, gentlemen, that as the population has greatly increased, so has the criminal and civil business of the sessions; and, moreover, many of each class of cases are of difficulty and importance, with many witnesses, and require that attention which I am resolved they shall always have, as far as I am concerned.

"I have yet, gentlemen, one other matter to mention to you—that in order to obviate as much as possible the inconvenience and loss of time of which the venire jurymen have of late so much, and I doubt not justly, complained, I intend for the future to appoint a certain day, before which they need not attend, and on and after which they may attend and despatch consecutively whatever business there may be for them. Whether this fixed day shall be for the future immediately before or after the sessions, I have not yet determined. The Christmas sessions are rather exceptional, as far as regards myself, and some of the gentlemen at this Bar who also attend the Beverley sessions. Desiring to accommodate them as far as I deemed fair and reasonable, I have named Wednesday, the 3rd of January, for the sitting of the Venire Court, which will admit of the members of the Bar attending on the Tuesday at Beverley, on which day the greater portion of the business of their sessions is transacted, and the bulk of the Bar released from attendance. I hope to finish the criminal business here by Saturday next, or at latest on Monday; and cheerfully sacrifice the one or two intervening days, remaining here idle, to consult the convenience of those members of the Bar who may have business at Beverley.

"I repeat, gentlemen, what I said in a letter, recently read before the town council, that I feel a warm interest in the Venire Court, and am delighted to see the town council of the same mind. The Venire Court is a very ancient Court of civil justice here, absolutely unlimited in jurisdiction, except in respect of lo-

cality. It sits throughout the year; the deputy Judge is your able and experienced town clerk, whose decisions I have never once hitherto had occasion to overrule. There is as free audience for attorneys and solicitors as for the Bar: and I have seen gentlemen in both departments of the Profession discharge the duties of advocates in this Court in the most able and satisfactory manner, and in cases of no little difficulty and importance. And I never saw jurymen discharge their duties better.

"Having adverted to jurymen, allow me to say that: their duties, alike in criminal and civil cases, are equally important and honourable. Nay, they are very elevating: for they train the mind to grave, patient, dispassionate inquiry—teaching the noble lesson of keeping the judgment suspended, uninfluenced by mere assertion, by sophistry, by prejudice, by prepossession; and while doing this, becoming also familiar with the system of judicial investigation and the great leading principles of our civil and criminal law. No jurymen who forms a proper estimate of his position—one which trains and prepares him admirably to fill municipal office—will feel impatient while called on by his country to exercise such interesting and momentous public functions."

The learned recorder then proceeded to say that he regretted to find that, although little more than two months had elapsed since the last session, there were not less than 46 or 47 distinct cases for trial, involving at least 49 prisoners. And he was sorry to find that among these cases were some which he had hoped would have been decreased by the wholesome severity which he had felt it his duty to exercise. There were no fewer than 10 cases of servants robbing their masters. That must be put down. He would venture to remind the grand jury that they had not to try cases, but simply to ascertain whether on the blush—on the first aspect of the case—there was enough of suspicion of guilt to warrant them sending the case into the Court for trial. There were one or two cases of felony, by youthful offenders, and it might occur to some of them that these might have been disposed of summarily by the excellent gentleman (Mr. Travis) who sat by him. But he (the recorder) presumed that the magistrate acted upon the principle of the Act of Parliament which enabled justices to deal summarily with juvenile delinquents. That Act did not apply to compound felonies, but in the express terms of the Act to simple larcenies only. And if a child unfortunately committed a compound felony as it was called, he (the recorder) and the jury alone could deal with it—as in the case where a child stole from the person—that took the matter out of the hands of the stipendiary magistrate and compelled him to send it there. There were one or two cases involving only a small amount of property. But the amount had nothing to do with the matter. If the

grand jury, in their sworn judgment, believed that there had been a felony, the value of the goods had nothing to do with it. Property was necessarily exposed on wharves, railroads, &c., and if only a single apple, or orange, or piece of rope was stolen, the value of it was not for consideration. Alluding to a case of rope stealing, where the rope had not been removed wholly from the premises, the recorder pointed out the law, that if with a felonious intent property was only removed a hair's breadth, that constituted a stealing.

Immediately previous to their being discharged, on Saturday afternoon, the foreman of the grand jury (Charles Liddell, Esq., Banker), read in open Court the following important presentment:—

"The grand jury beg, before separating, to express to you, sir, as the recorder of this borough, their sincere thanks for having so ably and so forcibly, in your charge, called their attention to the important subject of reformatory schools. In all that you have advanced respecting the treatment of juvenile criminals they entirely concur. They feel convinced that a considerable number of the juvenile offenders that now repeatedly are brought before you at borough sessions, can be efficaciously dealt with only by judiciously removing them early from the evil influences by which they are surrounded, and by placing them in some reformatory institution, in which they may be trained as to enable them to earn for themselves an honest livelihood, and thus become useful members of society. The grand jury, therefore, trust that the recent Act of Parliament, giving the people power to establish reformatory schools, and enabling the Home Secretary to provide entirely or in part for their maintenance, may early receive the careful attention of the magistrates and town council of this borough, and they ardently hope that at no distant period means will be adopted to carry into effect a recommendation which, in its operation, must prove an immense benefit to the whole community."

"CHARLES LIDDELL, Foreman."

#### EQUITABLE DEFENCES TO ACTIONS AT LAW.

By section 83 of the Common Law Procedure Act, 1854, the parties in a cause in which, if judgment were obtained, would be entitled to relief on equitable grounds, may plead the facts by way of defence to the action.

The following annotation on this enactment is extracted from Mr. Malcolm Kerr's work:—

"One head under which Courts of Equity have constantly given relief, has been that of 'accident.' At law, an executor, having once

received assets of his testator, cannot discharge himself under a plea of *plene administravit*, against a creditor seeking satisfaction out of the testator's assets, either on the score of inevitable accident, as destruction by fire, loss by robbery or the like, or reasonable confidence disappointed, or loss by any of the various means, which afford excuse to ordinary agents and bailees, in cases of loss without any negligence on their part. (7 *East*. 258.) Thus in a case where an executor having received assets, and paid them over to a co-executor for the purpose of satisfying a bond-creditor, who had demanded payment from such co-executor, upon the latter applying it in payment of his own simple contract debts, it was held that the executor, who had paid him the money, could not discharge himself by the plea of the *plene administravit* to an action by the bond-creditor. In equity, however, although an executor is liable should he ~~unnecessarily~~ pay over assets to his co-executor whereby they are embezzled or lost. (*Townsend v. Barker*, 1 Dick. 356; *Langford v. Gascoigne*, 11 Ves. 333), yet if the payment were in discharge of a necessary duty, as for the purpose of satisfying creditors residing at a distance from the executor remitting such assets, he would not be liable for their loss. (*Bacon v. Bacon*, 5 Ves. 331; 2 *Tudor's Leading Cases in Equity*; 659, 660.) Again, in equity, an executor has been held not liable for the loss of assets occasioned by fire (*Lady Croft v. Lyndsey*, Freem. Ch. Rep. 1) or robbery (*Holt v. Holt*, 1 Ch. Ca. 191, *Jones v. Lewis*, 2 Ves. 240). In these cases an executor might have proceedings against him at law restrained; he may now plead in bar of an action the same circumstances which would have entitled him to this relief in equity. On the other hand, the plaintiff may, by way of replication, insist upon any of those circumstances, which in equity would have rendered the executor liable, as for instance, that the payment to the executor was unnecessarily made.

"The Courts of Equity also give relief against mistakes. Although relief will not be afforded against the legal consequences of anything done in ignorance of the law (*Marshall v. Collett*, 1 Y. & C. Exch. Ca. 238; *Great Western Railway Company v. Cripps*, 5 Hare, 91; *Drew*. Inj. 62), a Court of Equity will frequently give relief against the legal consequences of mistakes of facts. Where, for instance, a person executed a deed, in which he, by mistake, covenanted to pay a sum of money to another, who commenced an action against him, a Court of Equity granted an injunction to restrain the action. (*Ball v. Storie*, 1 S. & S. 210, see also *Drew*. on Injunct. 62.)

"Another very important head under which equity gives relief is that of *fraud*, both actual and constructive. There are many cases where a Court of Law does not take cognizance of what is considered fraud in a Court of Equity. Where, for instance, the owner of an estate stands by and permits another person to expend money upon it, in ignorance of the

owner's title, a Court of Equity will not allow him to proceed to take advantage of his legal right, by ejecting, without compensation, the person who has made such expenditure. (*Hunning v. Ferrers*, Gilb. Eq. Rep. 456; *Stiles v. Cowper*, 3 Atk. 83; *Earl of Oxford's Case*, 1 Ch. Rep. 1; 2 *Tudor's L. C.* in Eq. 442; note, p. 456.) But in such cases the defendant, it would seem, must still resort to a Court of Equity, for how can such facts be pleaded as an equitable defence to an action of ejectment? Although the word 'cause' is used in sec. 83, it can never have been contemplated that the defendants in ejectment should be enabled to plead to the writ. It is clear that it is only in 'personal actions' that an equitable defence may be set up by way of plea.

"Again, when a party has conveyed a reversionary or expectant interest for an inadequate value, he can set aside the transaction, in a Court of Equity, upon the ground that undue advantage has been taken of his position. (*Gowland v. De Faria*, 17 Ves. 20; *Bawtree v. Watson*, 3 My. & K. 339; *Edwards v. Browne*, 2 Coll. 100; *Davies v. Cooper*, 5 My. & Cr. 270.) In an action against the vendor by the purchaser, for the amount agreed to be paid, the defendant may plead, that it was the sale of a reversionary interest at an undervalue.

"In these cases, in equity, the *onus* of proving the adequacy of the price lies upon the person dealing with the reversionary (*Gowland v. De Faria*, 17 Ves. 20). *Quære*, whether it will be so at law. Where, however, the dealing with a reversionary interest is in the nature of a family arrangement (*Tweddell v. Tweddell*, J. & R. 13; *Heron v. Heron*, 2 Atk. 160; *Wallace v. Wallace*, 2 D. & W. 452), or the party having a prior interest joins in the sale (*Wood v. Abney*, 3 Madd. 422; *Wardle v. Carter*, 7 Sim. 490), and, according to Lord Brougham, where the transaction was known to the father of the reversioner, or the person from whom the *spes successionis* was entertained (*King v. Hamlet*, 2 My. & K.), or if the transaction had been so acted upon as to alter the situation of the other party in his property (*Ib.* see *vide* Sug. V. & P. 316, 11 Ed.) a Court of Equity will not afford relief; and where a sale of a reversionary or expectant interest has taken place by *auction*, the purchaser is presumed to have given an adequate price for it (*Shelly v. Nash*, 3 Mad. 232), unless it appears that by the conditions of the sale or mode of conducting it, the interests of the reversioner were not properly attended to. (*Fox v. Wright*, 6 Madd. 111.) *Quære*, whether such facts can be set up as *avoiding a plea* (s. 85) to the effect above stated.

"Where an expectant or reversioner borrows money upon a post-obit bond, a Court of Equity will set it aside if unreasonable, or if the price be inadequate (*Curwys v. Milner*, 3 P. Wms. 293, note; *Peacock v. Evans*, 16 Ves. 512, and see 1 *Tudor's L. C.* 394). Such inadequacy of price may, it would seem, be pleaded in bar to an action upon the bond.



"Upon the same principle equity will give relief against proceedings at law, upon instruments obtained by *undue influence*, from persons standing in some fiduciary relation to the holder, as that of trustee and *cestui que trust*, guardian and ward, or any other relation in which dominion may be exercised by one person over another. (*Huguenin v. Basely*, 1 Tudor's L. C. and note *Cooke v. Lamotte*, 15 Bea. 234, *Espe v. Lake*, 10 Hare, 860). It is presumed that such relation, and the consequences which follow from it, may be urged in a Court of Law on proceedings being now instituted upon such instruments.

"With regard to relief against *forfeitures*, when a forfeiture is sought, a plea may now be put in, which formerly was only available in equity, as a ground for staying proceedings at law. Thus where a lessee covenants to do or not to do certain acts, with a clause of re-entry for breach of the covenant, and then commits such breach, equity will, under some circumstances, relieve against the strict legal consequences of breach of the obligation by the party bound. So, in some cases, when the thing to be done, the not doing of which has worked the forfeiture at law, can be specifically done, so as to put the party *bond fide* and entirely in *statu quo*—or the injury can be compensated by a sum certain, or by damages capable of being estimated by some certain rule of the Court—then equity will relieve, and there the facts may now be pleaded. (*Drewry on Injunctions*, p. 88.) The jurisdiction, which Courts of Equity assumed, to relieve a tenant from a forfeiture incurred by non-payment of rent, upon a bill filed after an *indefinite period*, by payment of the rent due interest and costs, was limited by the Legislature (4 Geo. 2, c. 28) to cases where payment was made, on the bill being filed, within six months after judgment had and recovered in ejectment and execution executed thereon. Courts of Law were, however, in the habit of relieving the lessee, by staying proceedings in ejectment, at any time before execution executed, on payment of arrears and costs, and in some cases giving security for future payments. (2 *Platt on Leases*, 275.)

"With regard to the relation of *principal and surety*, Courts of Equity frequently give relief against proceedings at law. Where, for instance, parties appear on the face of an instrument to be bound jointly and severally, as upon a bond, if one of them only in fact joined as surety, he can in equity plead that he was only a surety; so that if the principal creditor had given time to the debtor, he would be discharged in equity, although held bound at law. (*Craythorne v. Swinburne*, 4 Ves. 160, 170; *Clinton v. Hooper*, 1 Ves. jun. 173, 3 Bro. C. C. 201.) It is presumed, that now such person may, in an action against him by the creditor, plead that he was only a surety, and that time was given to the principal debtor.

"The Courts of Law have no power of interference in those cases, where a person has,

what is termed, an *equitable interest* in property. Where, for instance, a tenant has contracted to purchase from his landlord the property of which he is in the occupation, if the landlord take proceedings in ejectment, the tenant must still resort to the Court of Chancery, for his injunction to stay proceedings."

## LAW OF COSTS.

### WHERE CONCURRENT JURISDICTION UNDER COUNTY COURT ACT.

THE plaintiff in an action of trespass obtained a verdict with 5*l.* damages, and a Judge's order was made under the 15 & 16 Vict. c. 54, s. 4, to give him his costs of the trial. On a rule being obtained to rescind this order, upon the ground that the case was not within the 9 & 10 Vict. c. 95, s. 128, *Maise, J.*, said,—“The plaintiff having sued the defendant in the Superior Court, seeks to recover costs, on the ground that the case is one in which there is concurrent jurisdiction, because the defendant does not reside or carry on business within the district assigned to the Southwark County Court. To make out that proposition, the plaintiff states in his affidavit so much, I think, as he could reasonably be expected to say upon the subject. I think the defendant was called upon clearly to show, if the fact were so, that he really did carry on business at the place indicated. This might have been done by some clerk or foreman. But nothing of the kind is done. There is, it is true, an affidavit by his bailiff, which is evidently intended to give a sort of colour that business of some sort is carried on by the defendant at the place referred to. But I think there was amply sufficient to call upon the defendant clearly and distinctly to show where he carried on his business; and this he has not done.” The rule was discharged, but, under the circumstances, without costs. *Stokes v. Grissell*, 14 Com. B. 678.

## POINTS IN EQUITY PRACTICE.

### SETTING OUT DOCUMENTS IN ANSWER.

*Held*, that a defendant is not bound to set forth in his answer a list of documents in his possession relating to his own title. *Sutherland v. Sutherland*, 17 Beav. 209.

### REFERENCE TO WIND UP COMPANY AT CHAMBERS.

On a petition by a contributory to have a

banking company wound up, the *Master of the Rolls* considered that it was not imperative on the Court, under the 15 & 16 Vict. c. 80, s. 10, to make such reference to the Master, and said he would refer the matter to his own Chambers, when it would be more immediately under his own control. *In re Newcastle, Shields, and Sunderland Union Bank*, 17 Beav. 470.

## STATISTICS OF THE PROFESSION.

### NUMBER OF CANDIDATES EXAMINED, 1836–1854.

THE following statement will show that upwards of two-thirds in number of the Attorneys and Solicitors in England and Wales, have undergone the examination at the Incorporated Law Society during the last 18 years:—

|  | Candidates Passed.               | Postponed. |
|--|----------------------------------|------------|
| 1850.—Hilary . . . . .   | 81                               | 8          |
| Easter . . . . .   | 83                               | 33         |
| Trinity . . . . .  | 116 <sup>41</sup> / <sub>2</sub> | 9          |
| Michaelmas . . . . .   | 132 <sup>41</sup> / <sub>2</sub> | 0          |
| 1851.—Hilary . . . . .   | 96 <sup>17</sup> / <sub>2</sub>  | 7          |
| Easter . . . . .   | 100                              | 11         |
| Trinity . . . . .  | 72 <sup>37</sup> / <sub>2</sub>  | 10         |
| Michaelmas . . . . .   | 109                              | 8          |
| 1852.—Hilary . . . . .   | 91                               | 18         |
| Easter . . . . .   | 80                               | 6          |
| Trinity . . . . .  | 80 <sup>35</sup> / <sub>2</sub>  | 10         |
| Michaelmas . . . . .   | 108 <sup>41</sup> / <sub>2</sub> | 7          |
| 1853.—Hilary . . . . .   | 49                               | 10         |
| Easter . . . . .   | 88                               | 4          |
| Trinity . . . . .  | 69 <sup>315</sup> / <sub>2</sub> | 23         |
| Michaelmas . . . . .   | 109 <sup>42</sup> / <sub>2</sub> | 5          |
| 1854.—Hilary . . . . .   | 62                               | 23         |
| Easter . . . . .   | 102                              | 5          |
| Trinity . . . . .  | 75 <sup>354</sup> / <sub>2</sub> | 11         |
| Michaelmas . . . . .   | 115 <sup>52</sup> / <sub>2</sub> | 20         |
|  | 1817                             | 228        |
| From Trinity Term 1836<br>to Michaelmas Term<br>1842 (see 25 Leg.<br>Obs. 216) . . . . . | 2742                             | 110        |
| From Hilary Term 1843<br>to Michaelmas Term<br>1849 (see 40 Leg.<br>Obs. 503) . . . . .  | 2569                             | 204        |
|  | 7128                             | 542        |

### PROPOSED CONSOLIDATION OF THE STAMP LAWS.

AMONGST the various branches of the Statute Law which are proposed to be consolidated and amended, there is none so practically important to the Public as well as the Profession as the *Stamp Laws*. It must be admitted that great improvements

were effected by the Act of 1850, and that whilst the Public was thereby relieved of many vexatious burdens, the revenue has not ultimately suffered.

Our attention has lately been called to a pamphlet on this important subject by Mr. Chamberlain, a Solicitor at Portsea, containing many valuable suggestions for the amendment of the Stamp Acts, preceded by an historical summary,—from which we extract, in substance, the following statement down to the 55 Geo. 3, c. 184:—

The first Act of Parliament imposing stamp duties, was the 5 & 6 William and Mary, c. 21, entitled ‘An Act for granting to their Majesties several duties upon vellum, parchment, and paper, for four years, towards carrying on the war against France.’

The next Statute passed was the 9 & 10 Wm. and Mary, c. 28. Its title is, ‘An Act for explaining and regulating several doubts, duties, and penalties in the late Act for granting several duties upon vellum, parchment, and paper, and for ascertaining the admeasurement of the tonnage of ships.’ This jumbling of one thing into another was a favourite usage with the fabricators of Acts of Parliament, with which every one conversant with the Statute Law is familiar. Numerous instances could be furnished. Many of the Statutes relating to attorneys contained enactments as to bread, coals, cattle, salmon, turnips, seamen, the excise, &c.

By the 9 & 10 Wm. 3, c. 25, stamp duties were imposed upon deeds, leases, and other documents, and also on legal proceedings. The 10th year of the reign of Wm. 3, was rather past the time at which the stamp duties, imposed for four years, should have ceased to be levied; but then came an Act perpetuating and increasing their number. With respect to the duties on law proceedings, the public have been relieved from these by 5 Geo. 4, c. 41.

Various Acts followed in the reign of Queen Anne for regulating, and also for increasing, the various stamp duties, until the reign of Geo. 1, by which time stamps were required to be affixed to a great variety of documents, besides those charged with stamp duties by the earlier Acts. The 1 Geo. 1, c. 12, constituted the stamp duties a part of the aggregate fund; and in that reign; and also in the beginning of that of Geo. 3, several other Acts were passed, down to the 23 Geo. 3, c. 49, which would appear to be what may be correctly termed the first modern Act upon the subject of the stamp duties, if an unimportant provision of 1 Anne, c. 22, be excepted, as, though for the most part repealed, a portion of it is understood to be still in force.

This is the first Act charging bills of exchange and deeds with stamp duty, of which any portion is now law; but it was a repealed Act, framed one year before or in 1782, by

which bills of exchange and notes were first charged with stamp duty; and it may be mentioned, the amount of duty at that time was very moderate, being for all bills under 50*l.*, *threepence*; and for all such documents given for larger amounts, *sixpence*. But it should be remembered that the increase in this item of the stamp duties will bear no comparison to that in many others. The 23 Geo. 3, c. 49, had the effect of increasing most of the stamp duties, and was the first Statute which charged them upon *agreements*. With regard to agreements, they afford the example of practical and important relief to the community being afforded by recent legislation on the Stamp Laws. By the Act just mentioned a stamp duty of 1*6s.* was charged upon every agreement the matter whereof should exceed the value of 20*l.*, with one or two trifling exceptions. By the 44 Geo. 3, such agreements, with the alteration that the matter of them need not *exceed* but only *amount* to the value of 20*l.*, were charged with a duty of 1*6s.*; and by the 48 Geo. 3, the same duty of 1*6s.* was continued.

The duty on the same instruments, however, was subsequently augmented to 1*l.*, and continued to be of that amount until the great boon conferred on the public by the passing of the Act, 7 Vict. c. 21, by which the duty on agreements, previously charged with 1*l.*, was reduced to *two shillings and sixpence*. By this Statute immense relief is afforded to all the industrious classes. To use an expression which, were it not unfortunately so seldom required, might be stereotyped, the measure is 'a step in the right direction.'

The 31 Geo. 3, c. 21, imposes penalties on accepting or paying unstamped bills; and declares that such bills shall be inadmissible in evidence.

The 32 Geo. 3, c. 51, is entitled 'An Act to exempt certain letters passing between merchants or persons carrying on trade or commerce in the kingdom containing agreements with respect to merchandise, notes, or bills of exchange, from the stamp duty now imposed on written agreements.' This statute is deserving of a few passing remarks, as it affords an example of the wide-spread injury occasioned by the injudicious imposition of stamp duties. The Act recites, 'that doubts had been entertained respecting its operation upon correspondence between merchants resident in different parts of the kingdom, which, if subject to the effect of the said Act, and not within the provisions by way of exception thereto, would be attended with many evils to the commerce of the country. In plain language, it was supposed that the 23 Geo. 3, c. 58, would render inadmissible in evidence on trials of causes, letters between merchants containing anything which could, by the ingenuity of lawyers, be strained into agreements, unless such letters were stamped; and as the Act provided that no agreement could be stamped except within 21 days after it was made, it is very easy to understand that many most im-

portant transactions between merchants residing at a distance from each other would be rendered absolutely nugatory for want of a stamp. It is easy to see how this might be the case now, and more easy to see how it might have been the case upwards of 50 years ago, when the 23 Geo. 3 was passed. The exemption provided by the 32 Geo. 3 does not extend to parties not residing at the time of writing the letters at the distance of 50 miles from each other. With regard to correspondence constituting agreements requiring to be stamped, it may be observed, that where 'divers' letters shall be offered in evidence to prove any agreement, the stamp required is 1*l.* 15*s.* The Act states, 'Where several letters constitute an agreement, it shall be sufficient if any one of such letters be stamped with a stamp of 1*l.* 15*s.*' Here, however, in steps the Common Law, and, besides innumerable other decisions on the subject, determines that if one instrument (that is, one letter) be distinct, and does not refer to the others, though they may constitute one transaction, *several stamps* are necessary. From this severe law there is no relief, for the very acceptable Statute, 7 Vict. c. 21, only applies to agreements charged by the Stamp Act with a duty of *one pound*; therefore, by the rules of construction of Statutes known to lawyers, all agreements charged with a duty *other than one pound* are excluded from the operation of the Act.<sup>1</sup>

The 30 Geo. 3, c. 55, was an Act relating to receipts, and there are many others on various matters connected with the stamp duties, on policies of insurance, probates of wills, newspapers, appraisements, and appraisers' licences. Next came the 48 Geo. 3, c. 149—an important Act repealing duties, but retaining the regulations of the prior Acts.

We come next to the 55 Geo. 3, c. 184, entitled an 'Act for repealing the stamp duties on deeds, law proceedings, and other written or printed instruments, and the duties on fire insurances, and on legacies, and successions to personal estate upon intestacies now payable in Great Britain; and for granting other duties in lieu thereof.'

After this historical review, Mr. Chamberlain proceeded in his publication to state the numerous objections which existed against the oppressive and impolitic exactions which were contained in or created by the Act of July 10th, 1815. Many of these objections have been removed, but several still remain.

<sup>1</sup> Such is Mr. Chamberlain's view of the effect of the Stamp Acts relating to *agreements* contained in the correspondence of parties to alleged contracts. It should also be recollected that the 17 & 18 Vic. c. 83, s. 13, *repeals* the former enactments which exempted letters by the general post acknowledging the safe arrival of bills of exchange, &c., from the receipt stamp.—Ed. L. O.

The subsequent Stamp Acts, six in number, are the 13 & 14 Vict. c. 97; the 16 Vict. c. 5; the 16 & 17 Vict. cc. 59, 63, and 71; and the 17 & 18 Vict. c. 83.

It may be said, more truly now than ever, that it is almost an act of common justice to consolidate the numerous scattered enactments in force upon this most important subject into one well-digested and methodical Statute. Besides the multifarious Acts of Parliament bearing upon this every-day matter of business, sufficiently numerous and complicated to puzzle the most sagacious and entrap the most wary practitioner, there are not a few important provisions respecting stamps, scattered about in Statutes not having any direct connexion with them. For instance, while the Stamp Duties' Bill of 1850, that is the 13 & 14 Vict. c. 97, was before the public, it was observed by the Parliamentary Committee of the Incorporated Law Society, which suggested and carried several very useful amendments in that Act, that it would "be desirable to introduce a clause enabling parties, when an objection is taken to the validity of a deed by reason of its being insufficiently stamped, to pay to the officer of the Court before which the objection is taken, the amount of the deficient duty and penalty thereon, under proper regulations." But this most valuable suggestion was not acted on either in the Act of 1850 or the subsequent Acts, but in a modified form in the Common Law Procedure Act of 1854; the modification is, that whereas the Committee contemplated an objection by the *parties*, the Act provides that it shall be the duty of *the officer of the Court* to point out any deficiency in the stamp; but it may be observed, it does not appear clear whether the officer is to satisfy himself of the sufficiency of the stamp, and object to it if it be deficient, or whether he may pass the document without examination, if no objection be taken by either party to the suit.

The Succession Duty Act, also, is a Statute which, though not literally perhaps a Stamp Act, must be taken to be another to be added to the list. The succession duty as akin and in strict analogy to the legacy duties, will always be by the Profession connected with the complicated Law of the Stamps, in addition to which the 9th section of this Statute expressly provides, that "the duties hereinafter imposed shall be considered as Stamp Duties, and be under the care and management of the Commissioners of Inland Revenue."

There is no need, on the present occasion to do more than enumerate the recent numerous enactments on the subject of stamps. The Profession is, of course, familiar enough with the new provisions. It will be sufficient to observe that the whole question appears to be in an almost inextricable mass of confusion, and also that the probate and administration duties are still left to inflict the injustice which they have been inflicting for the last forty years.

## UNQUALIFIED PERSON ACTING AS CONVEYANCER.

### ACTION TO RECOVER FEES.

THE defendants to an action brought by the plaintiff to recover for conveyances drawn by him, pleaded in the terms of the 44 Geo. 3, c. 98, s. 14.<sup>1</sup> On demurrer to this plea,—*Parke, B.*, said,—“I am of opinion that the defendants are entitled to judgment. The true principle is laid down in *Cope v. Rowlands*, 2 M. & W. 149, and *Smith v. Mawhood*, 14 M. & W. 452; and the question in all these cases is, whether, looking at the Statute, the object of the Legislature in imposing a penalty was to prohibit the particular act, or whether it was for a different purpose. Therefore, the simple point which we have now to decide is, whether the Legislature intended to prohibit this Act being done under penalty,

<sup>1</sup> Which enacts, that “every person, who shall, for or in expectation of any fee, gain, or reward, directly or indirectly, draw or prepare any conveyance of a deed relating to any real or personal estate, or any proceedings in law or equity, other than and except serjeants-at-law, barristers, solicitors, attorneys, notaries, proctors, agents, or procurators, having obtained regular certificates, and special pleaders, draftsmen in equity, and conveyancers, being members of one of the four Inns of Court, and having taken out the certificates mentioned in the said schedule to this Act annexed,” &c., “and other than and except persons solely employed to engross any deed, instrument, or other proceeding not drawn or prepared by themselves and for their own account respectively, and other than and except public officers drawing or preparing official instruments applicable to the respective offices, and in the course of their duty, shall forfeit and pay for every such offence the sum of 50*l.*: provided always, that nothing herein contained shall extend, or be construed to extend, to prevent any person or persons drawing or preparing any will or other testamentary papers, or any agreement not under seal, or any letter of attorney.”

and thus render it illegal; for if so the plaintiff cannot recover. Now, looking at the Statute, I am of opinion that the object of the Legislature was to confine the practice of drawing the instruments therein specified to a certain class supposed to have a competent knowledge of the subject, and to protect the public against the mistakes of inexperienced persons in matters of this kind; and with that view, the Legislature has prohibited these acts being done, except by a particular class of persons. The object of the Legislature could not have been merely to secure to the revenue the duty on certificates, because it is only persons who can by law obtain such certificates. In that respect, the case is different from *Smith v. Mawhood*, where the object of the Legislature was to compel the obtaining of licences, which any one might obtain, to deal in a particular commodity." And *Platt, B.*, added,—“The Statute was intended to prevent ignorant persons from drawing conveyances of serious import. The Legislature makes an exception in favour of serjeants-at-law and other persons of education. That such is the object of the enactment appears more especially from the language of the proviso, which says, that the Act is not to ‘prevent’ any person from drawing a will,” &c. *Taylor v. Crowland Gas and Coke Company*, 10 Exch. R. 293.

#### HILARY TERM EXAMINATION, 1855.

THE Examiners appointed for the examination of persons applying to be admitted Attorneys, have appointed *Tuesday*, the 23rd inst., at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to take the examination.

The Articles of Clerkship and Assignment, if any, with answers to the questions as to due service, according to the regulations approved by the Judges, must be left on or be-

fore *Wednesday*, the 17th instant, at the Law Society's office.

Where the articles have not expired, but will expire during the Term, the Candidate may be examined conditionally; but the articles must be left within the first seven days of Term, and answers up to that time. If part of the Term has been served with a *Barrister, Special Pleader, or London Agent*, answers to the questions must be obtained from them, as to the time served with each respectively.

A Paper of Questions will be delivered to each Candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each Candidate is required to answer *all* the Preliminary Questions (No. 1); and also to answer in *three* of the other heads of inquiry, viz. :—*Common Law, Conveyancing, and Equity*.

The Examiners will continue the practice of proposing questions in *Bankruptcy* and in *Criminal Law and Proceedings before Justices of the Peace*, in order that Candidates who may have given their attention to those subjects, may have the advantage of answering such questions, and having the correctness of their answers in those departments taken into consideration in summing up the merit of their general examination.

Under the Rules of Hilary Term, 1853, it is provided that every person who shall have given notice of Examination and Admission, and “who shall not have attended to be examined, or not have passed the Examination, or not have been admitted, may *within one week after the end of the Term* for which such notices were given, *renew* the notices for Examination or Admission *for the then next ensuing Term*, and so from time to time as he shall think proper;” but shall not be admitted until the last day of the Term, unless otherwise ordered.<sup>1</sup>

<sup>1</sup> This rule has been made in order to avoid the practice of giving double notices.

#### ATTORNEYS TO BE ADMITTED IN HILARY TERM, 1855.

##### Queen's Bench.

##### Added to List pursuant to Judge's Orders.

##### Clerks' Names and Residences.

##### To whom Articled, Assigned, &c.

Bishop, Mortimer Samuel, 20, Chancery Lane;  
24, Huntly Street, Tottenham Court Road.  
Harvey, Thomas Hingston, Mecklenburg St.,  
Middlesex  
Safford, Fred., L. S., Lower Calthepe St.;  
Whitehall Place; Hadleigh; and Metting-  
ham Castle  
Stone, George William, Albany Terrace, Cam-  
berwell

William Richard Bishop, Exeter

Joseph Roberts, Truro

J. F. Robinson, Hadleigh; Thomas Bortett,  
Whitehall Place

George Tamplin, Fenchurch Chambers

*Omitted in last List.*

|   |   |
|---|---|
| Handley, Robert, Burnley . . . . .  | R. Artindale, Burnley                                       |
| <i>Renewed Notices of Admission on the last Day of Hilary Term, 1855, of Persons who gave Notice of Admission for Michaelmas Term, 1854, pursuant to the Rule of Court Hilary Term, 1853.</i> |   |
| Alder, William, Herbert Street, Hoxton; and Andover . . . . .   | H. Footner, Andover   |
| Atchison, John Simons, Walthamstow . . . . .  | F. M. Selwyn, Temple; E. Clowes, Temple                     |
| Barber, George Henley, 64, Gloucester Terr.; and Gray's Inn Square . . . . .  | H. Mason, Basinghall Street                                 |
| Beynon, Thomas, Carmarthen . . . . .  | R. Rees, Carmarthen; S. B. Edwards, Carmarthen              |
| Burdekin, Benjamin, jun., 8, Store Street, Bedford Square . . . . .   | A. Smith, Sheffield   |
| Chambers, Robert Phillips, 7, Clement's Inn, South Square; and Swinton Street . . . . .   | E. Mullins, and R. Paddison, Tokenhouse Yd.                 |
| Clegg, Alfred, B. A., Manchester . . . . .  | W. B. Parker, Tan-yr-Alt, Llandulas; I. Hall, Manchester    |
| Coode, Frederick, 20, Chadwell Street, Myddleton Square . . . . .   | G. G. White, Launceston                                     |
| Cowburn, William Brett, Sydenham . . . . .  | W. Cowburn, and M. Tatlam, Lincoln's Inn Fields             |
| Griffith, William, Much Wenlock . . . . .   | A. Phillips, Shiffnal                                       |
| Grimmer, William Henry, 129, Tachbrook Street, Pimlico; Holloway; and Bradford . . . . .  | M. Foster, Bradford; J. Swithinbank, Leeds                  |
| Haines, William Tertius, 14, Manchester Buildings, Westminster; and Harbome . . . . .   | W. Haines, and F. J. Welch, jun., Birmingham                |
| Jukes, Edric Adolphus, 12, Warwick Court, Gray's Inn; and Camden Town . . . . .   | J. Marsden, Wakefield                                       |
| King, Robert, 10, Frederick Place, Mile End Road . . . . .  | L. Hicks, Gray's Inn Square                                 |
| Mayers, H. Stewart, Warwick . . . . .   | T. Nicke, Warwick   |
| Newham, H., jun., 59, Albany Street, Regent's Park; and Manchester . . . . .  | T. P. Cunliffe, Manchester                                  |
| Palmer, Gillies Charles, Grantham . . . . .   | W. Ostler, Grantham   |
| Parker, Thomas, jun., 37, Baker Street, Portman Square; and St. John's Wood . . . . .   | T. Parker, Lincoln's Inn Fields; T. Burgoyne, Oxford Street |
| Pattison, H. John, 74, Oxford Street . . . . .  | H. B. Wedlake, Temple                                       |
| Panll, Henry, Guildford . . . . .   | F. A. Trenchard, Taunton                                    |
| Perkins, Frederick, 16, Regent's Square; and York . . . . .   | R. Perkins, York  |
| Smith, Joseph, 25A, Dalby Terrace, Islington; Alfred Street; and Cockermouth . . . . .  | J. Steel, Cockermouth                                       |
| Smith, William, Cambridge Street; Hurst Gr.; Argyle Sq.; Featherstone Bldgs.; Maidstone . . . . .   | E. Hear, Maidstone  |
| Stephenson, William, 8, Lower Brunswick Terrace; and Kingston-upon-Hull . . . . .   | J. Earnshaw, Kingston-upon-Hull                             |
| Tucker, Edward, 2, Glengall Terrace, Peckham; and Bath . . . . .  | W. C. Gill, Bath  |
| Voules, Henry Edmund, 12, Alfred Place, Brompton . . . . .  | A. J. Lane, Surbiton; T. Clark, Doctors' Commons            |
| Walter, Alfred, Birmingham . . . . .  | G. Edmonds, Birmingham                                      |
| Whitgrave, Thomas John, Walsall . . . . .   | S. Wilkinson, jun., Walsall                                 |

**ATTORNEYS' BENEVOLENT INSTITUTION.**

We are glad to hear that the proposition which we announced some weeks ago, for establishing an institution for the benefit of aged and infirm members of the Profession, has been most cordially supported by a large proportion of the London Solicitors, who are willing to contribute liberally towards effecting the objects in view, and many of them

have signified their intention, not only to subscribe to the annual fund, but also largely to a permanent fund, either for investment, or for the erection of a college or otherwise, as may be deemed expedient.

Numerous suggestions have been received on various parts of the general plan. Several of its supporters are in favour of extending the institution to the country. Some recommend the postponement, at all events for the present, of the proposed building, whilst others are

strongly in favour of "a local habitation." All appear to be agreed in the general necessity of an establishment for the relief of deserving, but unfortunate, Attorneys and Solicitors, and the sentiment is very generally expressed that it is the duty of their branch of the Profession to commence the good work without delay; and that its success will reflect credit on the general body.

Many influential names have been received which will probably be added to the Provisional Committee already announced; and we understand that an early meeting will be convened to consider the several suggestions which have been made, and to settle the details of the plan.

## NOTES OF THE WEEK.

### INCREASED SALARIES OF THE COUNTY COURT JUDGES.

It appears that 15 of the 60 County Court Judges will in future receive a salary of 1,500*l.* each, instead of 1,200*l.* The Judges of the Metropolitan County Courts have been selected, we understand, for this increase of emolument, with others whose labours are supposed to be greater than the remaining 45 Judges. Some dissatisfaction, it may be expected, will be felt at the selection, and some additional grants may perhaps hereafter be made.

### VACANCY IN THE RECORD OFFICE.

The decease of Mr. Berry has occasioned a vacancy to be filled up by the Master of the Rolls. The salary is 1,200*l.* a year.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Master of the Rolls.

*In re the Cuckfield Burial Board.* Dec. 14, 1854.

### PURCHASE OF SETTLED LANDS UNDER BURLIARDS BEYOND METROPOLIS ACT.

*Certain lands settled with an ultimate reversion in the Crown, were taken under the 16 & 17 Vict. c. 134, with which the 8 & 9 Vict. c. 18, is incorporated. On petition for interim investment, held that the order must be made without prejudice to the rights of the Crown, who was not affected by s. 7 of the 8 & 9 Vict. c. 18, although the section authorised a sale by a tenant in tail disabled by Statute from barring the entail.*

THIS was a petition for the interim investment of the purchase-money of certain lands which had been taken under the 16 & 17 Vict. c. 134, for a burying ground. It appeared that the lands were settled with an ultimate reversion in the Crown under an Act passed in the 2 & 3 Phil. & M., and which provided that no feoffment, fine, or recovery should bind the Crown or the heir in tail.

By the 8 & 9 Vict. c. 18, s. 7 (which was incorporated in the 16 & 17 Vict. c. 134), it is enacted, that "it shall be lawful for all parties being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say) all corporation, *tenants in tail, or for life,*" &c.; "and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties," &c., "not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them."

*Waller in support; R. Palmer and Darling for the burial board; W. M. James and Hanson for the Crown.*

The *Master of the Rolls* said, that although the Lands' Clauses' Consolidation Act extended to the tenant in tail, it did not bind the Crown, and that the order must therefore be made without prejudice to the rights of the Crown.

### Vice-Chancellor Kindersley.

*Martin v. Forster.* Dec. 15, 1854.

### MARRIAGE OF WARD OF COURT WITHOUT LEAVE.—SETTLEMENT.

*A ward of Court, entitled to 2,519*l.* odd, had married with the consent of her mother and the trustees of her father's will, but without the leave of the Court being obtained, and it was proposed to settle 1,000*l.* only. On petition, upon her becoming of age, the sum of 2,500*l.* was directed to be settled, and the remainder to be paid to the husband.*

IT appeared that a ward of Court had married with the consent of her mother and the trustees of her father's will, but without the leave of the Court being obtained, and it was proposed to settle a sum of 1,000*l.*, part of a fund of 2,519*l.* odd, to which she was entitled on attaining 21, as one of the four residuary legatees in the above cause. She had married a commercial clerk, and having since attained 21, presented this petition for payment out and for the settlement to be carried out under the direction of the Court.

*Speed in support.*

The *Vice-Chancellor*, after an interview with the petitioner, said, that although the parties had not so intended, they had committed a contempt of Court. The husband had contributed nothing and there was no reason why he should have the large sum proposed. There would be a sum of 2,500*l.* settled, with proper

provision for the children of a second marriage of the petitioner, and the remainder be paid to the husband.

**Vice-Chancellor Wood.**

*Hilman v. Westwood.* Nov. 14, 1854.

**CONSTRUCTION OF POWER IN WILL TO APPOINT NEW TRUSTEES.**

*Upon a special case under the 12 & 13 Vict. c. 35, as to the construction of a power of appointing new trustees contained in a will, held that a trustee who had been appointed thereunder was empowered to appoint as if originally appointed in the will.*

THE testator by his will appointed three trustees, one of whom was his wife, *nominatim*, and provided that, if any of them, or of those to be appointed should die, decline, or become incapable to act in the trusts, it should be lawful for the surviving or continuing trustee for the time being, or the executors of the survivor, but with the consent of his wife during her widowhood, to appoint one or more trustees in the room of the trustee or trustees so dying, declining, or becoming incapable to act, and such new trustees should have all the same powers and authorities for all intents and purposes, as if originally nominated by the will. It appeared that upon the death of a trustee, the wife and the survivor had appointed a Mr. Barclay, and upon Mr. Barclay's declining further to act, the defendant Mr. Westwood had been appointed. The wife died in 1843, and the surviving original trustee in 1853. This special case was presented on the question whether Mr. Westwood had power to appoint two new trustees.

*Chandless, Wilcox, and Surragé* for the several parties.

The *Master of the Rolls* said, that in accordance with the case of *Meineitshagen v. Davis*, 1 Coll. 435, the surviving trustee was entitled to appoint such two new trustees.

(Sitting in Chambers.)

*Bebb v. Bunny.* Dec. 22, 1854.

**RIGHT OF PURCHASER TO DEDUCT INCOME TAX ON INTEREST ON PURCHASE-MONEY.**

*A purchaser is entitled to deduct the income tax on interest on his purchase-money paid to the plaintiff as vendor.*

*The interest reserved at a given rate per annum, though accruing de die in diem, is within the 40th section of the 16 & 17 Vict. c. 34; and there is no distinction between interest on mortgage-money and interest on purchase-money.*

ON the sale of an estate, the purchase was to have been completed, as from Christmas, 1852, on the 1st of March, 1853, but was not, in fact, completed until the 15th of May, 1854, and it was upon the interest on the purchase-money, from Christmas, 1852, to the 15th of May, 1854, that the purchaser claimed a deduction for income tax.

By the 102nd section of the 5 & 6 Vict. c. 35, it is enacted, that, "upon all yearly interest of money" or other annual payments either as "a charge on any property of the person paying the same by virtue of any deed, will, or otherwise, or as a reservation thereof, or as a personal debt or obligation by virtue of any contract or whether the same shall be received and payable half-yearly or at any shorter or more distant periods, there shall be charged for every 20s. of the annual amount thereof the sum of 7d." according to the 3rd case of Sched. D.; "and where such interest shall be payable out of gains and profits charged by the Act, the party liable to such annual payment shall be authorised to deduct out of such annual payment at the rate of 7d. for every 20s. of the amount thereof." And in every case "where any such (annual) payment shall be made from profits or gains not charged by that Act, or where the interest of money shall not be reserved, or charged, or payable for the period of one year, then there shall be charged upon such interest or other annual payment as aforesaid, the duty before-mentioned according to Schedule D., case 3." That case applies to "the duty to be charged in respect of profits of an uncertain annual value not charged in Schedule A." By the 2nd rule of case 3, Schedule D., "the profits on all interest of money not being annual interest, payable, or paid by any person whatever, shall be charged according to the preceding rule," rule 1, which directs the duty to be computed on the full amount of profits arising within the preceding year.

By the 2nd sec. of 16 & 17 Vict. c. 34, Schedule D., the duty granted by that Act is directed to be charged "for and in respect of all interest of moneys, annuities, and other annual profits and gains not charged by virtue of any of the other Schedules contained in the Act, and to be charged for every 20s. of the annual amount thereof." And, by sec. 40 of that Act, it is enacted, "that every person who shall be liable to the payment of any rent, or any yearly interest of money, or any annuity, or other annual payment, either as a charge upon any property, or as a personal debt or obligation, by virtue of any contract, whether the same shall be received or payable half-yearly, or at any shorter or more distant periods, shall be entitled, and is hereby authorised, on making such payment, to deduct and retain thereof the amount of the rate of duty which at the time when such payment becomes due, shall be payable under the Act."

The duties granted by this latter Act are by sec. 5, directed to be assessed, raised, levied, and collected under the rules, regulations, and provisions of the former Acts, so far as the same are not superseded by, or inconsistent with, the express provisions of the latter Act.

The following cases, under the Act of 5 & 6 Vict. were cited: *Dwal v. Mount*, 35 L. O. 260; *Holroyd v. Wyatt*, 1 De Gex & S. 125; *Dinning v. Henderson*, 3 ib. 702; *Dawson v. Dawson*, 11 Jur. 984; *Humble v. Humble*, 12



*Beau*, 43; and *Flight v. Camar*, Weekly Reporter, 1854, p. 437 (Vice-Chancellor Kindersley) under the Act of 16 & 17 Vict.

**Vice-Chancellor Wood**—The question in this case depends upon sec. 40 of the 16 & 17 Vict. c. 34 & sec. 2, Schedule D., the language of which sections, from their vagueness, creates some difficulty—with the view to resolve my own doubts I have, in addition to the assistance to be derived from the cases cited, endeavoured to ascertain what has been the practice of the authorities at the Inland Revenue Office. It appears never to have been doubted, that under sec. 40 the tax upon interest on mortgages should be deducted; and that in practice, the mortgagor in all cases deducts the tax, and I have been told by the authority above referred to, that prosecutions have been instituted against mortgagees to recover the penalty for refusing to allow such deduction, and that such penalty has been paid without proceeding to trial. Now a mortgage deed rarely (if ever) reserves a yearly interest. Most mortgage deeds contain only a covenant to pay the principal with interest at a certain rate per annum, on a day certain; after that it accrues *de die in diem*, and the interest, without any particular reservation, ordinarily is received half-yearly from year to year. It is difficult to see the distinction between interest so reserved and paid, and that which by special agreement accrues on purchase money, which also goes on from day to day, and may run on for a year or stop at any time on payment of the purchase money, and which, in some shape or other, forms a lien on the property. There are two classes of cases which have occurred in practice bearing on the question—1st. In the Masters' Offices I find that the tax has always been deducted in all cases of debts bearing interest, including even bills of exchange. Lord Justice Knight Bruce (in *Dinning v. Henderson*) having found that practice to be settled in respect of interest on bills of exchange, declined to disturb it, and allowed the deduction, although doubting the principle. 2nd. In payment of purchase money into Court, the deduction has not been allowed, and for the very obvious reason stated by Lord Langdale in *Duval v. Mount*, that payment into Court is not payment to the party entitled to deduct the tax (who must apply for the deduction when the money is paid out of Court), and of course the Court cannot be subject to the penalty mentioned in sec. 40 for not allowing the deduction. In that case, Lord Langdale expressly gave leave to apply when the money should be paid out, though it does not appear whether the purchaser availed himself of such liberty.

The whole difficulty is in the expression "yearly" interest of money, but I think it susceptible of this view, that it is interest reserved at a given rate per cent. per annum, or at least in the construction of the Act, I must hold that any interest which may be payable *de anno in annum*, though accruing *de die in diem* is within the 40th section. I cannot make

any distinction between interest on mortgage money and interest on purchase money. The case has been very well argued, and it was more particularly in reference to the point made on the part of the vendor, as regards Schedule D., that I referred to the authorities of the Inland Revenue Office, who say that that schedule was framed more particularly in reference to the case of public bodies, such as parochial boards, who have no income out of which interest is payable and are not assessed to the duty, and having to pay interest on bonds or the like, not, therefore, parties entitled to deduct the tax under section 40, so that the tax becomes payable by the receiver of the interest under Schedule D. I consider the Act very singularly worded, yearly interest being used apparently in the same sense as annual payments; but I am clearly of opinion that it means at least all interest at a yearly rate, and which may have to be paid *de anno in annum*, such as, in fact, is interest on purchase money, as well as mortgage interest, and that, therefore, the purchaser is entitled to deduct the tax in this case. In fact, if this interest be not subject to such deduction, I do not well see how it can be charged with the tax at all.

#### Court of Queen's Bench.

*Alceni v. Nigren*. Nov. 14, 1854.

ACTION BY ALIEN ENEMY.—PLEA NOT NEGATING CERTIFICATE UNDER ALIEN ACT.

*To an action for work done before the war with Russia, the defendant pleaded that the plaintiff was an alien born in Russia, and was now an enemy of our Sovereign Lady the Queen, and was residing in the kingdom without the licence, safe conduct, or permission of our Lady the Queen. On demurrer, held it was not necessary in the plea to negative the fact of the plaintiff's having obtained a certificate from the Secretary of State under the 7 & 8 Vict. c. 66, and that the action must abate during the war.*

THIS was a demurrer to the plea on this action, which was brought by a Russian subject to recover for work done before the breaking out of war with that country, alleging that the plaintiff was an alien born in Russia, and was now an enemy of our Sovereign Lady the Queen, and was residing in this kingdom without the licence, safe conduct, or permission of our Lady the Queen.

Unthank in support of the demurrer, on the ground that it did not negative the fact of the plaintiff's having obtained a certificate from the Secretary of State under the 7 & 8 Vict. c. 66.

The Court said, that the allegation of the plaintiff being here without the permission of the Queen negated any permission of the Secretary of State to reside here, and that the plaintiff could not recover pending the war, and the demurrer must be allowed.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

—“Still attended at your service.”—Shakespeare.

SATURDAY, JANUARY 20, 1855.

### INNS OF CHANCERY.

#### REVENUE IN TRUST FOR ATTORNEYS.

SOME months ago, we were induced to request the attention of our readers to the subjects which would probably come under the consideration of her Majesty's Commissioners appointed “to inquire into the arrangements of the Inns of Court and Inns of Chancery for promoting the study of the Law and Jurisprudence and securing a *sound legal education*.” It is remarkable that this inquiry extends as well to the Inns of Chancery as the Inns of Court, although in those minor societies there is no power or privilege analogous to the other, as there used to be in former times.

We do not distinctly understand the principle on which an inquiry was directed into both classes of these “ancient and honourable societies,” unless the contemplated improvement was to be extended to both. The Commission was the result of a resolution of the House of Commons (speaking in general terms) for the improvement of “legal education.” If by this was intended the education of the Bar only, why should the inquiry have gone beyond the Inns of Court, where alone the students for the Bar congregate, where they dine (in order that their social character and gentlemanly manners may be ascertained), and where, within the last few years, they are required to attend divers courses of learned lectures, and where (if they please) they may be examined before they take the degree of Barrister-at-Law.

Unless the further improvement of Students, or Articled Clerks, of the other branch of the Profession be contemplated, why should the Royal Inquisition compre-

hend the Inns of Chancery, the income of which seems to be vested as clearly in the Ancients of those societies, as the income of the Inns of Court in the Benchers; but, in both instances, in trust for the benefit of their respective members, being students or practitioners in the law?

We understand, indeed, that the Ancients, or principal officers of the Inns of Chancery, have been called before the Commissioners and asked about their “rents and comings in,” and whether there is any surplus after paying the expenses of the management of the property and the repairs or renewal of buildings, most of which are 200 years old or more? There being no surplus, the Commissioners, of course, can have nothing practically to deal with at the present time, though possibly they may express an opinion in regard to the future management of the property. However, supposing there were now, or should hereafter be, a surplus, on what ground could any part of it be applied for the education of students for the Bar, or to advance the interests of that branch of the Profession?

The Attorneys and Solicitors have been from time to time gradually excluded from the Inns of Court. Formerly students at law kept part of their Terms at the Inns of Chancery in their progress to the Bar, and Attorneys might be called to the Bar without ceasing to practice, as now required, for several years. These rights or privileges ceased long ago; and the members of the Inns of Chancery, whether Ancients or Juniors, are almost universally Attorneys or Solicitors. The two branches of the Profession have, for many years, ceased to associate in the Halls which were formerly common to both of them. There are still, however, some of the second branch of the

Profession, who being admitted as members of the Inns of Court before the year 1825, are entitled, we believe, to "go into Commons," though not to be called to the Bar until two years after they have taken their names off the Roll. But as to all other Attorneys and Solicitors, they can now resort only to the Inns of Chancery, where they purchase chambers or pay rent for their offices, and those societies have an undisputable right to apply their surplus income, if any, to promote the improvement and advance the interests of their branch of the Profession.

On the part of the general body of the Profession, it may be justly urged that the Benchers of the Inns of Court and the Ancients of the Inns of Chancery, hold the property of their respective societies in *trust*, for the benefit of the members of such societies. No one, we presume, will contend that the Benchers have the power to shut up their halls and libraries and dispose of the land, buildings, and gardens of the Inns of Court, and appropriate the produce to their personal benefit. The members of each society have an interest in the continuance of the society. And, to go a step further, we presume that the Benchers, even with the consent of every existing member, could not make a good title to a purchaser of the property, because it is held in *trust* not merely for the *present* but all *future* students and members. True it is, that the Benchers may refuse to admit persons whom they think objectionable; but they cannot refuse to admit *all* students, for this would lead to an intolerable grievance. As the Inns of Court are alone authorised to call members to the Bar, if they refused to admit any one as a student, such resolution would, in the course of no long time, deprive the suitors of the Courts of a competent number of advocates, unless indeed the Courts should determine to give the right of audience to Attorneys. No doubt the Judges possess this power, and in effect they exercised it in the Common Pleas on the famous "dumb day," when the Serjeants combined to withdraw all motions before the Court, and the Court intimated, that if the Serjeants persisted in their contumacy, the Attorneys should have audience in their stead.

Then, with regard to the Inns of Chancery, we believe it is not imagined by any of the governing bodies of those ancient societies,—although some of them possess the legal estate, or fee simple,—that they can sell and dispose of the property as they

please; and we are well assured that if they had the power they would not exercise it. We have no doubt that if hereafter, from an improved rental of the property, any surplus income should be realised, it will be applied in the most judicious manner that can be devised for the good of their branch of the Profession by grants for educational or benevolent purposes.

In concluding these remarks, we deem it important to submit to our readers a concise review of the early history of the Inns of Chancery:—1st, of those which are now in operation; and, 2nd, of such as are in *abeyance*, but which we trust will, in some form or other be revived and made available for the general benefit, either voluntarily by the present trustees, or under such new arrangements as the Legislature may deem just.

#### CLIFFORDS INN.

THIS Inn of Chancery was anciently the town residence of the Barons Clifford, and has since retained their name. The inheritance of the inn was granted by King Henry 2nd to Robert de Clifford. After the death of Robert de Clifford, Isabel, his widow, demised the house, in the 18 Edward 3, to the *students of the law* (*aprenticiis de banco*, in the words of the record) for the yearly rent of 10*l.* (but according to Stow 4*l.*). Afterwards, in consideration of the sum of 600*l.*, and the rent of 4*l.* per annum, it was granted to Nicholas Salyard, Esq., principal of this house, Nicholas Guybon, Robert Clinche, and other seniors of the inn. In the reign of Queen Elizabeth there were 100 students in term in Cliffords Inn, and 20 students out of term. Sir Edward Coke was a student in this inn before his admission to the Inner Temple.<sup>1</sup>

In the common place-book of T. Gibbon's Harl. MSS. is the following note respecting Clifford's Inn:—

"Upon Clifford's Inn Hall window is a coat of arms, Azure 3 Fesse Or, between 8 Golden Keyes, 3, 2, 2, 1, with this inscription—*'Will. Screen, electus et vocatus ad statum et gradum servientis ad legem extra hospitium istud et non aliunde, vixit temp. R. 2, Hen. 4, et Hen. 5.'*"

This William Screen was probably a *reader* in this Inn of Chancery, and had never filled the office in the Inner Temple, the house of court to which it was subordinate. At this early period it was the usual practice to call to the state and degree of *sergeant-at-law* those barristers of the Inns of Court only who had been chosen on account of their experience, gravity, and learning as *readers*, in the four houses; and this record of a deviation from that practice, on account of some special circumstances, shows how rare were the excep-

<sup>1</sup> See Stow, 435; Dugdale, 187; Pearce, 260; 4 Foss, 141.

tions to the general rule, and how singular a circumstance it was accounted that a reader in one of the lesser inns, who had never read in the hall of either of the principal houses, should be honoured with the coif.

This Inn comprises 17 houses, occupied by 39 tenants, of whom 20 are attorneys and solicitors.

A large new building was erected in this Inn a few years ago.

#### STAPLE INN.

This was an Inn of Chancery in the reign of Henry the 5th, as appears by an ancient MS. book containing divers orders and constitutions of the society.

On the 10th of November, 20 Hen. 8, by a grant of this date, the inheritance of Staple Inn passed from John Knighton, and Alice, his wife, daughter of John Chapwood, to the Benchers and ancients of *Grays Inn*. On the 4th of June, 20 Jac., Sir Francis Bacon, Knight, then Lord Verulam, &c., enfeoffed, Sir Edward Moseley, Knight, Attorney-General of the Duchy of Lancaster, Sir Henry Yelverton, and other ancients of *Grays Inn*, thereof by the name of "all that *messuage or Inne of Chancery, called Staple Inne*, and of one garden thereunto adjoining, with all and singular their appurtenances, situated in the parish of St. Andrews, Holborn, in the suburbs of London, which *messuage, &c.*, the said Francis Lord Verulam, lately had, together with John Brograve, Esq., attorney to Queen Elizabeth, of her Duchy of Lancaster, Richard Aunger, William Whyskine, and others then deceased, of the grant and feoffment of Sir Gilbert Gerard, Knight, then Master of the Rolls; Ralph Brereton, Esq., and William Porter, gentlemen, as by their deed, dated on the 18th of May, 32 Elis. more fully appeareth: To have, and to hold to the said Sir Edward Moseley, and others, their heirs and assigns, to the only use and behoof of the same Edward Moseley, Henry Yelverton, and their heirs and assigns for ever."

In the reign of Queen Elizabeth there were 145 students in Staple Inn in term, and 69 out of term. Readings and mootings were also observed here with regularity. Sir Simonds d'Ewes mentions that on the 17th February, 1624, in the morning, he went to Staple Inn, and there argued a moot point or law case with others, and were engaged in that exercise until near three o'clock in the afternoon.<sup>3</sup>

There are 12 houses in this Inn, occupied by 41 tenants, of whom 27 are attorneys and solicitors. Besides which is the spacious new building occupied by the Taxing Masters of the Court of Chancery.

#### NEW INN.

This house "having been formerly a common hostelry, or inn, for travellers, and called *Our Lady Inne*, became first an hostel

for the students of the law, upon the removal of the students of the law from an old Inn of Chancery, called 'St. George his Inne,' situate near Seacole Lane, a little south from St. Sepulchre's Church, without Newgate, and was procured from Sir John Fineaux, Knight, sometime Lord Chief Justice of the King's Bench, for the rent of 6*l.* per annum, by the name of New Inne."

Sir Thomas More was a student in this Inn of Chancery in the reign of Henry the 7th; and in the time of Queen Elizabeth there were 80 students here in term, and 20 out of term. Sir Simonds d'Ewes makes frequent mention of the moots, which were kept up in this Inn of Chancery during his period of study in the *Middle Temple*.<sup>5</sup>

In a suit in Chancery between New Inn and the Middle Temple, which was amicably settled by the award of Lord Hardwicke, the Middle Templars were directed to grant a lease at 4*l.* a year for several centuries.<sup>4</sup>

New Inn comprises 13 houses, occupied by 40 tenants, of whom 26 are attorneys and solicitors.

Considerable improvements have been lately made in this Inn, a large new building erected, and a carriage-way formed.

#### CLEMENT'S INN.

This was an Inn of Chancery before the reign of Edward the 4th. In 2 Hen. 7, 1486, Sir John Cantlowe, Knight, in consideration of 40 marks fine, and 4*l.* 6*s.* 8*d.* yearly rent, demised the house for 80 years to Wm. and John Eylot, in trust it is presumed, for the students of the law. About 20 Hen. 8, Cantlowe's interest therein passed to Wm. Holles, Knight, and Lord Mayor of London, and ancestor of the noble family of Newcastle, one of whom, John Earl, of Clare, whose residence was on the site of the present Clare Market, demised it to the principal and fellows of Clement's Inn.<sup>6</sup>

In the reign of Queen Elizabeth this Inn contained 100 students in term, and 20 out of term. That this house was under the governance of the Bench of the Inner Temple appears from the following case of Clement's Inn, reported in 1 Keeble, p. 135:—

"The Master and Society moved for restitution to a chamber upon a forcible entry, which was granted, but the Court would not meddle with the cause, but ordered the young men to submit and appeal to the Inn of Court, and thence to the Chief Justice, thence to the Lord Chancellor, and they allowed a society may seize a chamber for non-residence, or want of commons of any man, and would have laid one or two of the assistants by the heels till restitution and conformity, but would not determine the right of any Chamber there; but unless possession were delivered this day they ordered a tipstaff to do it."

<sup>3</sup> See Stow, 493; Dugdale's, Orig., 230; Pearce, 309.

<sup>4</sup> 4 Foss, 406.

<sup>5</sup> See Stow, 431; Dugdale's Origines Juridicales, 310; Pearce, 382; 4 Foss, 199.

<sup>6</sup> Stow, 493; Dugdale, 187; Pearce, 262; 4 Foss, 405.

There are 17 houses in Clement's Inn, occupied by 23 tenants, of whom six are attorneys and solicitors.

Several sets of chambers have been recently rebuilt in this Inn, and useful alterations made by which a carriage-way has been constructed.

#### BARNARD'S INN.

This is an Inn of Chancery belonging to Gray's Inn. "In the 13th year of the reign of King Henry the 6th, it was a messuage belonging to John Mackworth, then Dean of the Cathedral Church of Lincoln, and in that time in, the holding of one *Lyonel Barnard*, who next, before the conversion thereof into an Inn of Chancery, dwelt there, and it hath ever since retained the name of Barnard's Inn or Barnard's House."<sup>1</sup>

In the time of Queen Elizabeth there were 112 students in this Inn in term, and 24 out of term. At present there are, including the principal, ancients, and companions, in all, 18 members.

Barnard's Inn comprises seven houses, occupied by 13 tenants, of whom seven are attorneys and solicitors.

We shall take an early opportunity of noticing the other Inns of Chancery, wherein the usual meetings have ceased, but the "rents, issues, and profits" of which we trust will be applied to the beneficial purposes which were originally intended, or "as near thereto as circumstances will permit."

### NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.<sup>2</sup>

#### MILITIA.

##### 17 VICT. c. 13.

THE preamble recites the 42 Geo. 3, c. 90, s. 111; 42 Geo. 3, c. 91, s. 197; 42 Geo. 3, c. 120, s. 55. Militia may be embodied whenever a state of war exists.

The time of training may be extended after a corps of militia is called out; s. 1.

Time of drill not to be reckoned; s. 3.

Notice of the time and place of meeting to be sent by the commanding officer by post to the residences of the men as stated

in their attestations, and to be deemed sufficient; s. 4.

The following are the Title and Sections of the Act:—

An Act to amend the Acts relating to the Militia of the United Kingdom.

[12th May, 1854.]

Whereas under the Acts now in force concerning the militia of the United Kingdom the militia can only be drawn out and embodied, in England and Scotland respectively, in cases of actual invasion or upon imminent danger thereof, or in cases of rebellion or insurrection, and in Ireland, in cases of actual invasion, rebellion, or insurrection, or upon immediate danger thereof: And whereas it is expedient that the said Acts should be amended as hereinafter mentioned: be it therefore enacted, that whenever a state of war exists between her Majesty and any foreign power it shall be lawful for her Majesty and for the Lord Lieutenant or other chief governor or governors of Ireland respectively to cause all or any part of the respective militias in England, Scotland, and Ireland to be drawn out and embodied, in like manner as by the said Acts authorised in the cases therein mentioned; and all the provisions of the said Acts, and of all other Acts now in force, applicable for and in the case of the drawing out and embodying of such respective militias in the cases therein mentioned, and to such respective militias when so embodied, shall be applicable for and in the case of the drawing out and embodying of such respective militias under the authority of this Act, and to such respective militias when so embodied.

2. It shall be lawful for her Majesty, when any regiment, battalion, or corps of the militia in England is actually assembled for training and exercise for a less period than 56 days, or at any time after the notices to the men of such regiment, battalion, or corps to attend training and exercise for any such less period have been given by order signified under the hand of one of the principal Secretaries of State to the lieutenant of the county, riding, or place for which such regiment, battalion, or corps is enrolled, or in his absence to three or more deputy lieutenants of such county, riding, or place, to extend the period of such training and exercise for such period as to her Majesty may seem fit, not exceeding with the time for which such regiment, battalion, or corps may have been called out for such training and exercise the period of 56 days, and it shall not be necessary in any such case as aforesaid to give fresh notices to attend training and exercise; and all provisions applicable to such militia during the time of training and exercise shall be applicable to such regiment, battalion, or corps during such extended period as if the notices for calling out such regiment, battalion, or corps for such training and exercise had been given for such extended period, and the same had been authorised by law.

3. In case any of the commissioned officers

<sup>1</sup> Stow, 480; Dugdale, 310; Pearce, 382 4 Rose, 278.

<sup>2</sup> These Acts, though not strictly applicable to the professional employment of our readers in general, have become of such public importance that it is deemed useful to add them to the collection contained in the last and present volume. The Railway Traffic Act gives new and extensive powers to the Judges of the Superior Courts for the summary remedy of complaints.—Ed. L. O.

or privates of such regiment, battalion, or corps shall, previously to the assembling of the same for training and exercise, have been sent to their head quarters or attached to any corps of her Majesty's regular forces for purposes of instruction, the time during which they shall have remained at their own head quarters, or with the said corps, for instruction as aforesaid, shall not be reckoned as any part of the period of 56 days during which such then commissioned officers and privates may be kept assembled for training and exercise as hereinbefore provided.

4. Provided, that in the case of drawing out and embodying the militia in England, or any part thereof, under the authority of this Act, the notices to the militia men to attend at the time and place mentioned in the order of her Majesty for drawing out and embodying the regiment, battalion, or corps to which they shall belong shall be sent by the colonel or commanding officer of such regiment, battalion, or corps, by the post, to the residences of the several men as stated on their attestations, or as subsequently certified by them, and such notices shall be sufficient in all respects; and any militia man not appearing at the time and place appointed in such notice shall be deemed to have disobeyed her Majesty's order for drawing out and embodying the regiment, battalion, or corps to which he belongs, and shall be liable to be punished and dealt with accordingly; and the provisions of the 116th section of the Act of the 42 Geo. 3, c. 90, shall be applicable to such militia man, and to any person knowingly harbouring and concealing him.

#### RAILWAY AND CANAL TRAFFIC.

17 & 18 VICT. C. 31.

Construction of the words "Board of Trade;" "Traffic;" "Railway;" "Canal;" "Company." Stations; s. 1.

Duty of railway companies to make arrangements for receiving and forwarding traffic without unreasonable delay, and without partiality; s. 2.

Parties complaining that reasonable facilities for forwarding traffic, &c., are withheld, may apply by motion or summons to the superior Courts; s. 3.

Judges may make such regulations as may be necessary for proceedings under this Act; s. 4.

Court or Judge may order a re-hearing; s. 5.

Mode of proceeding under this Act; s. 6.

Company to be liable for neglect or default in the carriage of goods, notwithstanding notice to the contrary. Company not to be liable beyond a limited amount in certain cases, unless the value declared and extra payment made. Proof of value to be

on the person claiming compensation. No special contract to be binding unless signed. Saving of Carriers Act 11 Geo. 4 & 1 Wm. 4, c. 68; s. 7.

Short title; s. 8.

The following are the Title and Sections of the Act:—

An Act for the better regulation of the Traffic on Railways and Canals.

[10th July, 1854.]

Whereas it is expedient to make better provision for regulating the traffic on railways and canals: be it enacted as follows:—

1. In the construction of this Act "the Board of Trade" shall mean the Lords of the Committee of her Majesty's Privy Council for Trade and Foreign Plantations:

The word "traffic" shall include not only passengers, and their luggage, and goods, animals, and other things conveyed by any railway company or canal company, or railway and canal company, but also carriages, waggons, trucks, boats, and vehicles of every description adapted for running or passing on the railway or canal of any such company:

The word "railway" shall include every station of or belonging to such railway used for the purposes of public traffic: and

The word "canal" shall include any navigation whereon tolls are levied by authority of Parliament, and also the wharves and landing-places of and belonging to such canal or navigation, and used for the purposes of public traffic:

The expression "railway company," "canal company," or "railway and canal company," shall include any person being the owner or lessee of or any contractor working any railway or canal or navigation constructed or carried on under the powers of any Act of Parliament:

A station, terminus, or wharf shall be deemed to be near another station, terminus, or wharf when the distance between such stations, termini, or wharves shall not exceed one mile, such stations not being situate within five miles from St. Paul's Church, in London.

2. Every railway company, canal company, and railway and canal company shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles, and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and every railway

company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway or canal or railway and canal communication, or which have the terminus, station, wharf of the one near the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay, and without any such preference or advantage, or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public in that behalf.

3. It shall be lawful for any company or person complaining against any such companies or company of anything done, or of any omission made in violation or contravention of this Act, to apply in a summary way, by motion or summons, in England, to her Majesty's Court of Common Pleas at Westminster, or in Ireland to any of her Majesty's superior Courts in Dublin; or in Scotland to the Court of Session in Scotland, as the case may be, or to any Judge of any such Court; and, upon the certificate to her Majesty's Attorney-General, in England or Ireland, or her Majesty's Lord Advocate in Scotland, of the Board of Trade alleging any such violation or contravention of this Act by any such companies or company, it shall also be lawful for the said Attorney-General or Lord Advocate to apply in like manner to any such Court or Judge, and in either of such cases it shall be lawful for such Court or Judge to hear and determine the matter of such complaint; and for that purpose, if such Court or Judge shall think fit, to direct and prosecute, in such mode and by such engineers, barristers, or other persons as they shall think proper, all such inquiries as may be deemed necessary to enable such Court or Judge to form a just judgment on the matter of such complaint; and if it be made to appear to such Court or Judge on such hearing, or on the report of any such person, that anything has been done or omission made, in violation or contravention of this Act, by such company or companies, it shall be lawful for such Court or Judge to issue a writ of injunction or interdict, restraining such company or companies from further continuing such violation or contravention of this Act, and enjoining obedience to the same; and in case of disobedience of any such writ of injunction or interdict it shall be lawful for such Court or Judge to order that a writ or writs of attachment, or any other process of such Court incident or applicable to writs of injunction or interdict, shall issue against any one or more of the directors of any company, or against any owner, lessee, contractor, or other person failing to obey such writ of injunction or interdict; and such Court or Judge

may also, if they or he shall think fit, make an order directing the payment by any one or more of such companies of such sum of money as such Court or Judge shall determine, not exceeding for each company the sum of 200*l.* for every day, after a day to be named in the order, that such company or companies shall fail to obey such injunction or interdict; and such monies shall be payable as the Court or Judge may direct, either to the party complaining, or into Court to abide the ultimate decision of the Court, or to her Majesty, and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by decree or judgment in any superior Court at Westminster or Dublin, in England or Ireland, and in Scotland by such diligence as is competent on an extracted decree of the Court of Session; and in any such proceeding as aforesaid, such Court or Judge may order and determine that all or any costs thereof or thereon incurred shall and may be paid by or to the one party or the other, as such Court or Judge shall think fit; and it shall be lawful for any such engineer, barrister, or other person, if directed so to do by such Court or Judge, to receive evidence on oath relating to the matter of any such inquiry, and to administer such oath.

4. It shall be lawful for the said Court of Common Pleas at Westminster, or any three of the Judges thereof, of whom the Chief Justice shall be one, and it shall be lawful for the said Courts in Dublin, or any nine of the Judges thereof, of whom the Lord Chancellor, the Master of the Rolls, the Lords Chief Justices of the Queen's Bench and Common Pleas, and the Lord Chief Baron of the Exchequer, shall be five, from time to time to make all such General Rules and Orders as to the forms of proceedings and process, and all other matters and things touching the practice and otherwise in carrying this Act into execution before such Courts and Judges, as they may think fit, in England or Ireland, and in Scotland it shall be lawful for the Court of Session to make such Acts of Sederunt for the like purpose as they shall think fit.

5. Upon the application of any party aggrieved by the order made upon any such motion or summons as aforesaid, it shall be lawful for the Court or Judge by whom such order was made, to direct, if they think fit so to do, such motion or application on summons to be reheard before such Court or Judge, and upon such re-hearing to rescind or vary such order.

6. No proceeding shall be taken for any violation or contravention of the above enactments, except in the manner herein provided; but nothing herein contained shall take away or diminish any rights, remedies, or privileges of any person or company against any railway or canal or railway and canal company under the existing law.

7. Every such company as aforesaid shall

be liable for the loss of or for any injury done to any horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto, or in anywise limiting such liability; every such notice, condition, or declaration being hereby declared to be null and void: provided always, that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to the receiving, forwarding, and delivering of any of the said animals, articles, goods, or things, as shall be adjudged by the Court or Judge before whom any question relating thereto shall be tried to be just and reasonable: provided always, that no greater damages shall be recovered for the loss of or any injury done to any such animals, beyond the sums hereinafter-mentioned; (that is to say) for any horse 50*l.*; for any neat cattle, per head, 15*l.*; for any sheep or pigs, per head, 2*l.*; unless the person sending or delivering the same to such company shall, at the time of such delivery, have declared them to be respectively of higher value than as above-mentioned; in which case it shall be lawful for such company to demand and receive by way of compensation for the increased risk and care thereby occasioned, a reasonable per centage upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge; and such per centage or increased rate of charge shall be notified in the manner prescribed in the Statute 11 Geo. 4, and 1 Wm. 4, c. 68, and shall be binding upon such company in the manner therein-mentioned: provided also, that the proof of the value of such animals, articles, goods, and things, and the amount of the injury done thereto, shall in all cases lie upon the person claiming compensation for such loss or injury: provided also, that no special contract between such company and any other parties respecting the receiving, forwarding, or delivering of any animals, articles, goods, or things as aforesaid shall be binding upon or affect any such party unless the same be signed by him or by the person delivering such animals, articles, goods, or things respectively for carriage: provided also, that nothing herein-contained shall alter or affect the rights, privileges, or liabilities of any such company under the said Act of the 11 Geo. 4 and 1 Wm. 4, c. 68, with respect to articles of the description mentioned in the said Act.

8. This Act may be cited for all purposes as "The Railway and Canal Traffic Act, 1854."

#### SALE OF BEER.

17 & 18 VICT. C. 79.

THE preamble recites the 11 & 12 Vict. c. 49.

Licensed victuallers, &c., prohibited from opening houses for sale of beer, &c., during certain hours of Sunday, &c.; s. 1.

Houses, &c., of public resort prohibited from being opened for sale of liquors, &c., on Sundays, &c.; s. 2.

Power to constables to enter houses, &c.; s. 3.

Penalty for offences against this Act; s. 4.

The following are the Title and Sections of the Act:—

An Act for further regulating the Sale of Beer and other Liquors on the Lord's Day.  
[7th August, 1854.]

Whereas the provisions in force against the sale of fermented and distilled liquors on the Lord's day have been found to be attended with great benefits, and it is important to extend such provisions: Be it enacted, as follows:

1. That it shall not be lawful for any licensed victualler or person licensed to sell beer by retail to be drunk on the premises or not to be drunk on the premises, or any person licensed or authorised to sell any fermented or distilled liquors, or any person who by reason of the freedom of the mystery or craft of vintners of the City of London, or of any right or privilege, shall claim to be entitled to sell wine by retail to be drunk or consumed on the premises, in any part of England or Wales, to open or keep open his house for the sale of or to sell beer, wine, spirits, or any other fermented or distilled liquor between half-past two o'clock and six o'clock or after ten o'clock in the afternoon, on Sunday, or on Christmas Day, or Good Friday, or any day appointed for a public fast or thanksgiving, or before four o'clock in the morning of the day following such Sunday, Christmas Day, or Good Friday, or such days of public fast and thanksgiving, except as refreshments to a *bond fide* traveller or a lodger therein.

2. That no person shall open any house or place of public resort for the sale of fermented liquors, or sell therein such liquors, in any part of England or Wales between half-past two o'clock and six o'clock or after ten o'clock in the afternoon, on Sunday, or on Christmas Day or Good Friday, or any day appointed for a public fast or thanksgiving, or before four o'clock in the morning of the day following such Sundays, Christmas Day, or Good Friday, or such days of public fast and thanksgiving, except as refreshment for travellers.

3. That it shall be lawful for any constable at any time to enter into any house or place of public resort for the sale of beer, wine, spirits, or other fermented or distilled liquor or liquors; and every person who shall refuse to admit or shall not admit such constable into such house or place shall be deemed guilty of an offence against this Act.



§ 4. That every person who shall offend against this Act shall be liable, upon a summary conviction for the same before any justice of the peace for the county, riding, division, liberty, city, borough, or place where the offence shall be committed, to a penalty not exceeding 5*l.* for every such offence, and every separate sale shall be deemed a separate offence.

## CHANGE OF SOLICITORS AND DELIVERY OF PAPERS.

### DRAFTS OF DEEDS.

On the change or retirement of a solicitor, it is the usual practice to retain the drafts of deeds and letters addressed to him. The papers delivered over generally consist of original deeds and documents, the cases and opinions of counsel, and the papers and proceedings in actions and suits. The general opinion appears to be, that solicitors may retain the letters addressed to them and the drafts of their letters; but they cannot withhold the drafts of deeds, although containing their own minutes or memoranda, or the remarks of counsel, and which may be required for their own justification on the matters in question, or which they may be called upon to produce by either party, in case the original deeds should be lost.

In the following case it was held, that an attorney, upon receiving the amount of his bill, is bound to deliver up to his client, not only original deeds belonging to him, but also the drafts and copies of such deeds.

A rule nisi had been obtained for setting aside an order made by the Judge at Chambers, and which had afterwards been made a rule of Court, whereby the attorney was ordered to deliver up the drafts, copies, &c., of certain deeds then in his custody. It appeared that he had been employed for several years by the client; and after the client's death, his daughter applied to have all deeds, papers, &c., in the attorney's possession delivered up, and offered to pay whatever was due to him. The attorney delivered up all the deeds and original documents, but claimed a right to retain the drafts and copies which his client had paid for.

Lord Tenterden, C. J., said, it may be convenient, in some cases, to leave drafts, and copies of deeds, or other documents in the hands of an attorney, but the client is the proper person to judge of that. He who pays for the drafts, &c., by law has a

right to the possession of them. The rule must be discharged. *Ex parte E. Horsfall*, 7 Barn. & Cress. 528.

## NOTICES OF NEW BOOKS.

*Manual of Civil Law, comprising an Epitome in English of the Institutes of Justinian.* By E. R. HUMPHREYS, LL.D. London: Longman & Co. Pp. 288.

THIS Manual appears to be designed for candidates for the civil service generally, and not for the student of the law in particular; but we consider it to be a very useful publication for those who are just entering on their legal studies, and we think they will do well to read this little volume before they sit down to Blackstone's Commentaries.

Dr. Humphreys observes, that

"In any civilised state of society, where the community are governed by laws, a knowledge of the principles of justice upon which those laws are founded must be important to every educated citizen, who considers himself entitled to their protection, and amenable to their restrictions in the ordinary routine of social life. This interest presents itself to us in several different points of view: the Civil Law is the foundation of the jurisprudence of all modern European nations; it constitutes, together with the old feudal law, the basis of the Common Law of England: of the law of Scotland it forms a still larger ingredient; and of the practice of our Courts of Chancery, which adjudicate questions of a nature that could not have arisen under the feudal law, it may be regarded principally, if not exclusively, as the foundation and precedent. It is also a monument of the wisdom and justice of the most powerful nation of antiquity, neither less worthy of attention, nor less pervading in its influences, than the reliques of their fine arts; and it is of peculiar importance to the classical scholar, as being necessary to illustrate the meaning of many passages, more particularly in the Latin authors, where the allusions to legal questions and usages, and the instances of legal phraseology are far more numerous than may be generally supposed by students unacquainted with the Roman Law. We must perceive that this is necessarily the case, from the circumstance that among the Romans, during the most flourishing periods of the Republic and the Empire, the knowledge of the law was not confined, as it is among us and other modern nations, to the members of any particular profession: it was an indispensable part of the acquirements and accomplishments of every citizen of rank, fortune, and education,—resulting originally from the peculiar relation between patron and client,—that he should attain to such a knowledge of

the laws as might enable him to act as an advocate; and this laborious duty was performed for several ages without any other compensation than the celebrity and influence attendant upon success. Even the Roman poets—notwithstanding the natural antipathy that may be supposed to exist between poetry and law—make many allusions to law, and were frequently, particularly in the case of Ovid, distinguished for their legal learning: in every Roman Author, in fact, many passages occur, which would be unintelligible if we had not the Roman laws to guide us to their meaning, and of which many persons, unacquainted with those laws, entertain very erroneous ideas."

If the knowledge of this subject be useful to the general scholar, the learned Author observes, it must be still more important and valuable to all who are preparing themselves for the legal Profession.

The sources from which the Civil Law is deduced are then stated, and from this part of the work we deem it useful to make the following extracts:—

"The *Læges Regiæ* were those enactments which originated with the Roman kings, and were enacted or passed in the *Comitia Curiata*, the original public assembly, and, after the reform introduced by Servius Tullius, in the *Comitia Centuriata*. Between these two assemblies the difference was simply this; that none could act as members of the *Curiata* who were not also members of the patrician *gentes*, which were subdivisions of the *Curie*, and enjoyed a monopoly of all political power, reserving to themselves the exclusive privileges of making laws and holding magistracies; and keeping themselves isolated from the *plèbe* by forbidding intermarriage: these privileges are known as the *jus suffragii*, *jus honorum*, and *jus connubii*. The *plèbe*, on the contrary, enjoyed only those rights which were common to both orders, those of holding and purchasing all property, except the *ager publicus* (land annexed by conquest); and these common privileges, called the *jura sacra et commercii*, constituted the *jus Quiritium*. It will appear from this, that the necessary qualifications for the *Comitia Curiata* was birth; for which Servius Tullius substituted a property qualification, entitling all who possessed it to seats in a newly constructed council, called, from the system of election or representation adopted by him, the *Comitia Centuriata*.

"The *Placida* were the laws passed in the *Comitia Tributa*, an assembly established A.D.C. 283, and for which the sole qualification was residence in a certain district. From these *Comitia* the patricians were altogether excluded, and the laws emanating from them were considered binding upon the *plèbe* only, until, by the enactment of the *lex Hortensia*, in A. U. C. 286, they were received as obligatory upon the whole community.

"It appears, then, that while the Senate was exclusively aristocratic, like our House of

Lords, the *comitia* resembled our House of Commons; the names *Curiata*, *Centuriata*, and *Tributa*, indicating the successive changes in its constitution: the first, implying that the members were qualified by birth only; the second by property; and the third—as the democratic element in the state prevailed—signifying that residence was the only qualification. The laws passed in the two first have not been recorded with any certainty, and were most probably borrowed from the neighbouring nations.

"The *Senatus consulta* and *Decreta*, which at first consisted merely of orders issued to military commanders and other public officers, and ordinances intended to meet particular exigencies, and were rather of an administrative than a legislative character, began to be regarded as laws towards the close of the Republican era; and, during the earlier ages of the Empire, as long as the senate retained any influence, made large additions to the rapidly increasing body of Roman law.

"Of the Twelve Tables, which exhibited the first attempt on the part of the Romans to construct a regular system of national and impartial laws, it is necessary to treat more fully. In the year of the city 292, C. Terentilius, a tribune of the *plèbe*, propounded a law for defining the powers of the consuls, which was as strenuously opposed by the patricians as it was advocated by the democratic party. The contest on the subject of this *lex Terentilla* having continued for eight years with considerable excitement, it was also resolved, *Hermodoro auctore*, at the suggestion of Hermodorus an Ephesian refugee then residing in Rome, that measures should be adopted for preparing a code of written laws; and, accordingly, three commissioners were sent to Athens, to obtain information respecting the laws of Solon and other Greek legislators; and on their return the *decemviri*, appointed for the purpose, with the assistance of Hermodorus, prepared a digest of the laws and forensic usages theretofore existing among the Romans, modified and improved by the addition of everything worthy of adoption or suited to the circumstances, in the foreign laws which are believed to have been collected not only in the cities of Greece, but also among the Greek towns of Southern Italy. The services of Hermodorus were rewarded by a statue erected in the Comitium. To this account of the Twelve Tables objections have been made by some distinguished authors. Professor Vico of Naples first called in question the truth of the account given by Livy and Dionysius of Halicarnassus; and his example has been followed by many others, including the historian Gibbon. The objections are, that the appointment of the commission is nowhere directly mentioned by Cicero; and that, from whatever source the Twelve Tables may have been compiled, they could not have survived the destruction of Rome by the Gauls. To this it may be replied, that Cicero may not have had occasion to make any direct allusion to the commission; that it is everywhere al-

luded to as a generally recognised fact by the Roman writers; and that, although the statements of Livy and Dionysius relating to certain occurrences have been impugned, those statements refer to the very early periods of Roman history, which, like the earliest periods of all other histories, are confessedly legendary and fabulous. It may be said, therefore, that, both sides of the question being impartially considered, the fact of the commission may be regarded as established upon very sufficient evidence. Again, even granting that the Twelve Tables perished in the general ruin of the city, it would be absurd to suppose that, of the numbers of intelligent men who have made those laws their study, there were not several who could transcribe them correctly.

"The matters of which the laws of the Twelve Tables treated were: the rights, privileges, and exemptions of Roman citizens; the power of creditors over debtors; trials involving rank, liberty, and life; the regulations of inheritances, guardianships, and ownership; penalties for various offences; the rates of money, with some sumptuary and other enactments; and all these ordinances were regarded as the basis of Roman jurisprudence until the compilation of the Theodosian Code."

## NEW ORDERS IN LUNACY.

### MAINTENANCE OF LUNATICS.

12th January, 1855.

I, ROBERT MONSEY, Baron Cranworth, Lord High Chancellor of Great Britain, intrusted, by virtue of her Majesty the Queen's Sign Manual, with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, do with the advice and assistance of the Right Honourable Sir James Lewis Knight Bruce, and the Right Honourable Sir George James Turner, the Lords Justices of the Court of Appeal in Chancery, also being intrusted as aforesaid, and by virtue and in exercise of the powers or authorities in this behalf vested in me by the Lunacy Regulation Act, 1853, and of every other power or authority in anywise enabling me in this behalf, order as follows:—

I. That the Masters in Lunacy do from time to time furnish the visitors of lunatics, with abstracts of their reports as to the fortune, income, and maintenance of each lunatic, and of the orders confirming such reports, and inform the said visitors of any increase which may have accrued in the fortune of, and of any change which may have been made in the allowance or scheme for the maintenance of any lunatic, so that at all times the said visitors may be fully acquainted with the amount of the fortune

and income of every lunatic, and with the scheme approved and the allowance made for his maintenance.

II. That the medical visitors of lunatics do on each occasion of visiting any lunatic, inquire and examine whether such lunatic is maintained in a suitable and proper manner, having regard to the then existing amount of the allowance ordered to be paid, and the then existing scheme approved of for the maintenance of such lunatic; and also, whether having regard to the then fortune and income of such lunatic, it appears expedient that any and what addition should be made to his comforts, or any and what alterations should be made in the scheme for or manner of his maintenance.

III. That if the said visitors shall on such inquiry and examination consider that the lunatic is not maintained in such suitable and proper manner as is aforesaid; or that the allowance provided for his maintenance is not duly applied; or that any provision in the scheme for his maintenance, either for his personal comfort or enjoyment or otherwise, is not duly observed; or that any addition to the comforts, or any alteration in the manner of the maintenance of the lunatic should be made, which his then fortune or income is capable of providing, they shall forthwith make a special report, stating such their opinion, and the grounds thereof to the board of visitors.

IV. That the board of visitors shall proceed to consider such report of the medical visitors at their next meeting, and shall if they think fit refer the same to the Masters in Lunacy, to take such other steps thereon as may appear to them to be expedient.

V. That the Masters in Lunacy shall on any such report as aforesaid being referred to them by the board of visitors proceed to investigate the matters thereby reported upon, and may if they deem it expedient, summon the committee of the person or estate to attend before them to give explanations thereon; and the said Masters shall then make such report, if any, on the said matters to the Lord Chancellor as the said Masters may deem proper.

VI. That the medical visitors do in the annual report made by them to the Lord Chancellor in the case of each lunatic, pursuant to the Lunacy Regulation Act, state the result of the examination and inquiry as to the maintenance of each lunatic to be made by them pursuant to the foregoing order, and do also in any case in which

they shall have made any special report to the board of visitors pursuant to the above order, state so far as they may be able what steps have been taken in consequence of such special report.

CRANWORTH, C.  
J. L. KNIGHT BRUCE, L.J.  
G. J. TURNER, L.J.

[We are glad to publish these just, humane, and excellent provisions for the comfort of the unfortunate persons to whom they relate, and shall have some remarks to make on them in our next Number.—Ed. L. O.]

### ORDER OF THE MASTER OF THE ROLLS APPOINTING EXAMINERS.

10th January, 1855.

WHEREAS by an Order made by the Right Honourable the Master of the Rolls, on the 13th day of January, 1844, it was amongst other things ordered, that every person who has not previously been admitted an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them, should, before he be admitted to take the oath required by the Statute 6 & 7 Vict. c. 73, to be taken by persons applying to act as solicitors of the High Court of Chancery, undergo an examination touching the fitness and capacity to act as a solicitor of the said Court of Chancery; and that 12 solicitors of the same Court, to be appointed by the Master of the Rolls in each year, be Examiners for the purpose of examining and inquiring touching the fitness and capacity of any such applicant for admission as a solicitor; and that any five of the said Examiners shall be competent to conduct the examination of such applicant:

Now, in furtherance of the said Order, the Right Honourable the Master of the Rolls is hereby pleased to order and appoint that Benjamin Austen, Alfred Bell, William Loxham Farrer, Bartle John Laurie Frere, John Swarbreck Gregory, George Herbert Kinderley, Germain Lavie, Joseph Maynard, Edward Rowland Pickering, Charles Ranken, William Stephens, and John Young, solicitors, be Examiners until the 31st December, 1855, to examine every person (not having been previously admitted an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them), who shall apply to be admitted a solicitor of the said Court of Chancery touching his fitness and capacity to act as a solicitor of the said Court. And the Master of the Rolls doth direct that the said Ex-

aminers shall conduct the examination of every such applicant, as aforesaid, in the manner and to the extent pointed out by the said Order of the 13th day of January, 1844, and the regulations approved by his lordship in reference thereto, and in no other manner and to no further extent.

(Signed) JOHN ROMILLY, M. R.

### COMMON LAW COURTS.

#### APPOINTMENT OF EXAMINERS.

*Hilary Term, 1855.*

It is ordered that the several Masters for the time being of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, together with Benjamin Austen, Edward Savage Bailey, Alfred Bell, William Loxham Farrer, Bartle John Laurie Frere, John Swarbreck Gregory, George Herbert Kinderley, Germain Lavie, Joseph Maynard, Edward Rowland Pickering, Charles Ranken, William Stephens, Edward White, Edward Archer Wilde, William Williams, and John Young, Gentlemen, Attorneys-at-Law, be, and the same are hereby appointed, Examiners for the present year to examine all such persons as shall desire to be admitted attorneys of all or either of the said Courts, and that any five of the said Examiners (one of them being one of the said Masters) shall be competent to conduct the said examination, in pursuance of, and subject to, the provisions of the Rule of all the Courts made in this behalf in Hilary Term, 1853.

(Signed) CAMPBELL-  
JOHN JERVIS.  
FRED. POLLOCK.

### INCORPORATED LAW SOCIETY.

#### NOTICE TO CANDIDATES FOR EXAMINATION.

THE Candidates will be admitted into the Hall until 10 A.M. on the day appointed for the Examination.

Information as to the result of the examination will be given in the clerks' office, to which there is a separate entrance from Chancery Lane, at and after four o'clock on the day after the Examination, and no inquiries can be answered till then.

The Library will be reserved for the sole use of Members of the Society on the day of Examination, and will not be open to Subscribers on that day.

The Candidates cannot remain in the vestibule or passages of the Hall after they have

left the Hall on delivering in their papers; and strict orders have been given to exclude all strangers.

#### NOTICE TO MEMBERS.

The Hall, being occupied for the purposes of the Examination, will be closed to the Members on the day of Examination until six o'clock, when it will be re-opened.

The newspapers, Parliamentary papers, and notices will be placed in the Library, which will be open for the use of the Members until six o'clock P.M.

Some inconvenience occurred at the Examination in last Michaelmas Term, in consequence of a crowd of persons coming into the outer hall of the Society during the Examination, and also on the following day. The Candidates are admitted between half-past nine and ten o'clock, when the Hall door is closed. The answers to the questions are not received till one o'clock, but may be brought up from that time till four o'clock. There is other business of the Society to be transacted during the day, and the Members of the Society are constantly resorting to the Library, especially as they are excluded from the Hall during the Examination. It is, therefore, inconvenient that a crowd of persons should assemble and remain in the outer hall, through which the Members have to pass to the Library.

The above regulations have, therefore, been made. On the occasion referred to, there must have been many persons who had no right to enter or remain in the outer hall and passages; and the throng at the entrance was calculated to excite the curiosity of the idle, and perhaps to induce less harmless persons to join it. It is useless for the Candidates to remain after they have delivered in their papers, because the Examiners cannot finish their labours till the next day; and four o'clock has been fixed to enable the Candidates to communicate with their friends in the country by the post of that evening.

#### LAW OF ATTORNEYS AND SOLICITORS.

##### TAXATION OF BILL OF COSTS AFTER PAYMENT.—FRAUDULENT ITEMS.

It appeared that in the Month of December, 1846, Henry Abram, a pavior at Liverpool, mortgaged two houses to John

Pendleton, for the sum of 300*l*. The interest was irregularly paid, and the property was not more than a security for the principal amount charged. In the month of October, 1852, the mortgagor employed Messrs. Stockley and Thompson, as his solicitors, to pay off the mortgage. They applied to the mortgagee and his solicitor, Mr. Barrow, who expressed Mr. Pendleton's willingness to be paid off. The account was rendered, and the bill of costs of Mr. Barrow, the mortgagee's solicitor, was delivered at the same time, and which amounted to the sum of 23*l*. 7*s*. 7*d*. The mortgagor's solicitor took exceptions to this bill, and referred it to taxation, the result of which was, that more than one-sixth of it was taxed off. When the amount due on the bill had been ascertained by taxation, and in November, 1852, the solicitor of the mortgagor wrote to Mr. Barrow, and proposed then to pay the amount due for principal and interest and the costs so taxed. On the 18th of November, Mr. Barrow wrote a letter, as follows:—"Be Abram. I shall be ready at any time to receive the costs herein, when you may please to pay them. As to anything further in respect of this person, I am sorry that owing to his own improper course of conduct, I do not feel at liberty to say anything on behalf of the mortgagee to you." The mortgagee, in the same month, refused to receive his principal and interest, which were offered to him, and the result was, that notice of an assignment of the equity of redemption to the petitioner and of an intention to pay off the mortgage, was served on the petitioner on the 28th December, 1852, which notice expired on the 28th June, 1853. On then applying to pay off the mortgage, a fresh bill for 20*l*. was delivered by Mr. Barrow, the mortgagee's solicitor, which was proposed to be paid under protest. Mr. Barrow refused so to receive it, and offered to take the principal and interest due on the mortgage, and to retain the deeds until the amount on the bill could be ascertained and settled. This was refused, and ultimately the bill was paid on June 30, 1853, the protest having been withdrawn, and immediately after, Mr. Barrow was informed that it would be taxed, and the petition for that purpose was presented within a few weeks.

The *Master of the Rolls* said:—

"This is an application to tax a solicitor's bill, amounting to the sum of 20*l*. after payment. It requires a very special case to induce the Court to make such an order. The

cases are very numerous on the subject, and it may be said, that they lay down as the rule, that there must be pressure on the person paying, and overcharges in the bill, or else that there should be items in the bill itself, of such a nature as to amount to what is somewhat vaguely called fraud.

There was, in my opinion, sufficient time to ascertain and consider the objections to the bill before it was paid. In fact, the bill is not only a short one, but it is evident that the whole of the objections to the bill were well understood before the bill was paid. Nor does there, in my opinion, exist, in this case, what can properly be called pressure. In coming, therefore, to the conclusion which I have arrived at, that it is my duty to make an order for taxation, I have done so mainly upon consideration of the items contained in this bill, connected, as they are, with the other circumstances of the case. I think it desirable to state this distinctly, in order that if, as is probable, this case should go further, the grounds on which I proceed may be clearly understood, and that I may not be supposed to be infringing on the rule I have hitherto followed, with relation to taxation after payment. The items which have principally influenced me are items to this effect:—

“To taking instructions, &c., to file a bill of foreclosure.” [*His Honour stated the items, which amounted to 10*l.* 1*4s.* 8*d.**]

“In order to form a just opinion respecting the costs so incurred, it is necessary to recur to the situation of the parties, during the time when this bill of foreclosure must have been prepared. In October, 1852, the mortgagee, Mr. Pendleton, under the advice of Mr. Barrow, was willing to receive his principal, interest, and costs; the payment is delayed by the taxation of Mr. Barrow's first bill; at this time there was no arrear of interest due to the mortgagee; on the contrary, the mortgagee had distrained and received a sum in advance, beyond the interest due. The evidence convinces me that he and his solicitor not only had reason to believe, but that they did believe, that the money was ready to pay him off. The date of the preparation of the bill of foreclosure is not given in the bill of costs more precisely than ‘Michaelmas, 1852,’ but the items occur in the bill between the 2nd and the 18th of November, 1852; and the affidavit of Mr. Barrow says, that instructions were given at once, in consequence of Mr. Abram's conduct in distraining on the 30th of October. It was therefore pending these transactions, certainly after the order to tax the first bill was obtained, and probably during its taxation, that instructions are given to prepare a bill of foreclosure, which was never filed, and which I cannot ascertain that it was intended to file, and an expense of half the bill, between 10*l.* and 11*l.* is incurred in so doing.

“The reasons given in the affidavits for this proceeding are wholly unsatisfactory. They are, that the mortgagee was interfering with the rights of the mortgagee, and opposing his

authority and proceedings. The rights so interfered with were these:—Mr. Pendleton had been paid his full interest due up to the last day of payment; there was no arrear, and nothing was due to him in respect of interest. At that time, also, it is but reasonable to suppose, he intended to refuse, as he did a few weeks afterwards actually refuse, to receive the principal and interest due to him; he had thought proper to give notice to the tenants to pay their rents to him, and he had, against the wish and in spite of the opposition of the mortgagor, received 10*l.* 5*d.* from one of the tenants, on the 18th of October, and 10*l.* 10*s.* on the 19th or 20th of that month, although, as I repeat, nothing was due for interest at that time; all this being after the letter of the 13th of October, informing Mr. Barrow that his bill would be taxed. Mr. Abram, the mortgagor, resists this proceeding with the tenants, and distrains on the tenants.

“This is the account given of this transaction by Mr. Barrow:—‘On the 18th of October I had, against the opposition of Henry Abram, received from the tenant 10*s.* 5*d.* for rent, being the first sum of any kind I received on account of the said interest; and on the 30th of the same month, Abram distrained on the said tenant for the said rent so paid by him, and notwithstanding the threats and remonstrances of the tenant, he enforced payment of the said rent, as he also, in like manner, did on two subsequent occasions, namely, in the months of November and December following, though the mortgagee was still in the receipt of the rents.’ He continues,—“In consequence of the said distress by Abram, on the 30th of October, I at once submitted instructions to counsel to prepare a bill or other proceedings in Chancery, as circumstances might justify, in order to enforce and protect the rights of the mortgagee.”

“It is not alleged that these costs were incurred because the mortgagee thought that his mortgage-money was in peril, nor if so alleged could it be true, consistently with the facts admitted, to which I have already adverted. On the contrary, Mr. Pendleton, in his second affidavit, says,—‘That on the second proposal to pay off the mortgage without notice being made to me, I did not, for various reasons, feel disposed to receive the same, mainly in consequence of the said Henry Abram's misconduct in resisting my powers as mortgagee, as already stated, and for other reasons connected with the said Henry Abram; and accordingly my solicitor wrote to Messrs. Stockby and Thompson, in answer to their letter, that owing to the misconduct of Henry Abram, my solicitor was not at liberty to say anything on my behalf relating to Abram.’

“These are certainly not sufficient reasons to justify the taking of such a step as the preparation of the bill of foreclosure, and I am compelled reluctantly to come to the conclusion, that an ingredient in the incurring of these costs was a desire to prove to the mortgagee what a foolish and impudent proceed-

ing it was, to take so hostile a step as to tax the bill of costs of the mortgagee's solicitor. It is true, that the bill of costs and the items themselves are inconsiderable in amount, but it is of the greatest importance, that this Court should protect a client from costs wantonly and wholly unnecessarily incurred.

"I have already stated, that in my opinion, the expression used in these cases of 'items being fraudulent' is vague; and it is undoubtedly difficult to define accurately the costs which should come within the description of those which should be sufficient to induce this Court to tax a bill after payment.

"In the ordinary sense of the words, these items may not be fraudulent, but I understand the expressions and judgments of Lord Langdale in the reported cases to mean this:—that if business be transacted *bona fide*, with a view to benefit his client, the items detailing it cannot be considered fraudulent, even though they be overcharged in the bill of costs, but that if it appear that the bill of costs, or a large portion of it, is for business which, in the exercise of an honest and fair discretion, ought never to be transacted at all, then, that such items come within the class of items which will induce this Court to tax a bill, even though there was no serious amount of pressure at the time when the bill was paid.

"It is urged, no doubt correctly, that I must look at this bill, not as a bill between Mr. Barrow and the mortgagee, but as a bill between Mr. Barrow and his own client, Mr. Pendleton, the mortgagee, and further, that it appears by the evidence that the mortgagee expressly sanctioned and directed Mr. Barrow to take this step, and to incur those costs; and then, it is contended, that although this might be an item to be disallowed, in taking the account between the mortgagor and mortgagee, still as between the mortgagee and Mr. Barrow, he is liable to pay this amount to Mr. Barrow, and that therefore the mortgagor must be so liable in this proceeding.

"Admitting the premises, I differ with the conclusion. In the observations I have made, I have treated and considered the bill in this light, viz., whether Mr. Barrow could compel Mr. Pendleton, his client, to pay it, upon the assumption that he, from any circumstances, such as the insufficiency of the property, had been unable to obtain the amount due to him from the mortgagor. I am of opinion that the mortgagee, Mr. Pendleton, could not have been so compelled. I concur with the decision *In re Clark*, 1 De G., M'N. & G. 43, and I am of opinion that in taxing bills of costs, these costs of proceedings, which it is impossible that the client could have directed his solicitor to take, if he had received proper advice from his solicitor, ought to be disallowed. I consider, therefore, here, whether Mr. Pendleton could, if Mr. Barrow had properly instructed and advised him as to his position, have directed such proceedings to have been taken, and I am of opinion that he could not.

"But the case does not rest here; nothing

can be more vague or unsatisfactory than the affidavits on the subject of the instructions said to have been given to Mr. Barrow to take these proceedings. The time specified is immediately after the 30th of October, 1852. Mr. Barrow says, that he did it '*at once*,' in consequence of Abram having distrained. No interview with Mr. Pendleton is mentioned previously, nor does the expression in Mr. Barrow's affidavit allege or imply, that he took such instruction from Mr. Pendleton. The bill of costs does not contain one entry of attendance upon the mortgagee for this purpose, and the words of Mr. Pendleton's affidavit are not that he directed such proceedings to be taken, but that they were taken with his 'knowledge and authority.' The words are these:—'*Abram was again behind with his interest in June, 1852, and as I did not feel satisfied to allow the interest to accumulate, my solicitor, by my wish, took steps to obtain the same, at first, principally by writing to and calling upon the said Henry Abram, but without success; afterwards, by serving the tenant, Mr. Bentham, with notice to pay his rent to an agent on my behalf, and as the interest was still not paid, and no rent forthcoming from the tenant, by finally distraining on Abram, in respect of the house occupied by him; and again, on the next half-year's interest becoming due, it was necessary to proceed to make another distress, but which was not accomplished, and also pending the before-mentioned events and proceedings, it became necessary, owing to the opposition of Abram to my authority as mortgagee, by enforcing rent from the tenant after he had paid the same, or was liable to do so to myself, to institute proceedings against the said Henry Abram in the Court of Chancery, for the protection and enforcement of my rights as mortgagee.*' He proceeds to say, that all the acts and proceedings of his solicitor were taken 'not only of my general authority and retainer, but also with my special knowledge and authority on the occasions, and for my interest and safety; the receipt of the rent and distresses, in consequence of his refusal to pay the interest, and the proceedings or bill in Chancery, in consequence of Abram's opposition to the reasonable exercise of my powers and authority as mortgagee.'

"The person who makes this affidavit seems to be a tradesman residing at Prescott, who acted throughout under the advice of his solicitor, and only as he directed.

"The question is, whether payment ought, in these circumstances, to preclude the taxation of this bill? No doubt payment is a most material ingredient in these cases. This Court is always reluctant to open a matter deliberately settled between the parties to the transaction. Payment assumes, that the matter is settled between the parties, and the solicitor, so treating it, naturally takes less care of his vouchers and evidence; although no particular inconvenience can be alleged by Mr. Barrow in this case, inasmuch as he was informed, immediately after the settlement, that

the bill would be taxed, and the petition for that purpose was presented in the course of a few weeks after the transaction occurred. If the Court were to refuse taxation in such a case as the present, it appears to me that it would put a mortgagor entirely at the mercy of the solicitor of his mortgagee. In this case, for instance, what course could the mortgagor have adopted? If he had adopted the offer of Mr. Barrow and paid the principal and interest without getting the title-deeds, he might have been put to expensive proceedings before they could have been recovered. If he had adopted the course he took in October, 1852, and applied for an order to tax Mr. Barrow's bill, the same course might have been repeated, and a fresh bill of costs brought in again at the end of six further months, together with the unavoidable imputation, that, in truth, his money was not ready, and that he was adopting these steps for the purpose of delay.

"I certainly have shown no disposition to open a settled account, or to refer to taxation the bill of a solicitor once paid. I have thought that the doctrine of pressure ought not to be extended, and that, without it, mere overcharges, even though gross, which the client might have detected before payment, should not induce the Court to take this course, and, above all, I have considered, that it is incumbent on the petitioner to come speedily; but when I find a bill containing a series of items which, in my opinion, are not mere overcharges, but charges for a whole class of business which ought never to have been done at all, the case appears to me to fall within the principle laid down by Lord Langdale, when he said, that the nature of the items might be such as to require this Court to direct the taxation of the bill.

"I shall, therefore, in this case, make the usual order for taxation." *In re Barrow*, 17 Beav. 547.

## POINTS IN COMMON LAW PRACTICE.

### MOTION TO SET ASIDE NONSUIT.

*PER Cresswell, J.* :—"If the Judge tells the plaintiff's counsel that he will nonsuit him on a point of law, the latter does not by mere acquiescence lose his right to move; but if the Judge says he will nonsuit the plaintiff because there is no evidence to leave to the jury, that is a very different case; counsel, if they mean to object, should insist upon going to the jury, or they cannot afterwards complain.

\* \* \* In strictness, no doubt, the Judge has no right to nonsuit the plaintiff, where there are several issues. But, unless the counsel insist on the issues going to the jury, if the circumstances are such that the Judge ought, as matter of law, to have directed a verdict for the defendant, the nonsuit, though *in invitum*, ought to stand." *Hughes v. Great Western Railway Company*, 14 Com. B. 637.

### ADDITIONAL AFFIDAVITS ON APPEAL FROM COUNTY COURT JUDGE.

A summons was taken out before *Alderson, B.*, at Chambers, for an order allowing the plaintiff his costs, on the ground that it was a case in which the Superior Court had concurrent jurisdiction—as the plaintiff and the defendant dwelt more than 20 miles apart, but the Judge, on the facts, refused to make the order. Upon a like application to the Court, held that affidavits in addition to those read at Chambers may be used. *Sanderson v. Proctor*, 10 Exch. R. 189.

## RENEWED NOTICES OF ADMISSION

*For Hilary Term, 1855.*

### Clerks' Names and Addresses.

Parsons, Charles William, Store Street, Bedford Square; and Alfred Place  
Gregory, Charles, Hampstead; and Egham  
Rudyard, Frederick Colville, Macclesfield  
Rhodes, Arthur, Muswell Hill

### To whom Articled, Assigned &c.

F. J. Jessopp, Derby  
E. Lambert, John Street  
T. Parrott, Macclesfield  
H. Masterman, Bucklersbury

### APPLICATION FOR RE-ADMISSION.

#### Queen's Bench

*On the last day of Hilary Term, 1855.*

Kensit, Henry, 37, Inverness Terrace; Bayswater; and Hyde Park Gate, South.

### APPLICATIONS TO THE COURT TO TAKE OUT OR RENEW CERTIFICATES.

*On the last day of Hilary Term, 1855.*

Barber, William Henry, 25, Surrey Street, Strand

Gabb, Baker John, 6, Edgeware Road  
Newby, C. J., 27, Northumberland Place,  
Westbourne Grove; and Newport

### APPLICATIONS TO A JUDGE AT CHAMBERS TO TAKE OUT OR RENEW CERTIFICATES.

*On the 1st day of February, 1855.*

Allen, George, 27, John Street, Southwark  
Archbould, Ralph, Thrapston  
Ash, Thomas, 18, Soley Terrace, Pentonville  
Cooper, Rt., jun., Malvern; Cheltenham  
Cotton, Henry Morten, 41, Woburn Place



Courtesy, Richard, Lewisham  
 Cox, William, Daventry  
 Crickmore, William, Scole  
 Crockett, Richard Singleton, Brighton; and  
 Croydon  
 Dawson, John Huntingdon, 2, Spring Ter.,  
 Wandsworth Road  
 Drake, John, Llanecoston  
 Durant, Benjamin Chandler, 14, Belgrave  
 Street; Poole  
 Gooday, John Francis, Sudbury  
 Greenwood, Robert, Birmingham  
 Griffith, Thos. Aubrie, 15, Philip Lane, City  
 Hallett, Frederick Hughes, Ashford; and  
 Canterbury  
 Harding, James Nott, Amwell Street, Pan-  
 tonville; and Exeter  
 Inan, William, 44, Upper Winchester Street,  
 Islington  
 Julius, Herbert A. H., Paul's Road, Cam-  
 den Town; Warwick Court  
 Kingston, Joseph Francis, Barnstaple  
 Lane, Theophilus, Hereford  
 Lee, Edw. Alphonso, Kingston-upon-Hull  
 Milner, Christian Spädt, 17, Lincoln's Inn  
 Fields.

Moore, H., Shelsley Beauchamp; Plymouth;  
 Guernsey; Cherbourg; and Boulogne  
 Olive, Joseph, Twyford Buildings, Lincoln's  
 Inn Fields  
 Phelps, Isaac, South Brent  
 Powell, Frederick, Knaresborough  
 Remington, Reginald, Rochdale  
 Roberts, Richard, of Langefai, Anglesa;  
 and Cape Town, Cape of Good Hope.  
 Sanderson, William Barker, Leeds  
 Sawkins, George, 3, Manor Terrace, North  
 Chelsea; Stanley St.; and Charlwood St.  
 Stanley, C., 5, Millman Street, Bedford Row;  
 and London and Middlesex Debtors' Prison  
 Stutely, Henry Octavius, 3, Bowater Place,  
 Blackheath; and Chancery Lane  
 Vyner, Charles James, Nantwich  
 Walker, George, Spileby  
 Walker, George H., Newbold Grange, Rag-  
 by; Bombay; and the High Seas  
 Williams, Thomas Caredig, 47, Queen's Rd.,  
 Notting Hill  
 Whytehead, John, Kirby Moorside  
 Windsor, O. Richard, 25, Baker Street,  
 Lloyd Square  
 Wright, Egerton Leigh, Wigan.

#### RECENT DECISIONS IN THE SUPERIOR COURTS.

##### **Lord Chancellor.**

*Thornhill v. Thornhill.* Jan. 11, 1855.

##### **COSTS ON CONTEMPT BY INDUCING MAR- RIAGE OF WARD OF COURT.—INJUNC- TION.**

*The guardians of a ward of Court had obtained an injunction to restrain C. from inducing her to contract a marriage with him, and afterwards he was committed for the contempt. Upon his release on an undertaking to pay the costs occasioned by his contempt, held that the costs of the motion for an injunction were included in such costs.*

THIS was an application for a direction to the Taxing Master. It appeared that an injunction had been obtained to restrain Mr. Chichester from inducing a ward of Court to contract a marriage with him, and that afterwards he had been committed for contempt, but was subsequently released on expressing his contrition and on an undertaking to pay the taxed costs occasioned by his contempt forthwith. The Master, upon the taxation, had disallowed the costs of the affidavits on which the injunction was obtained as not falling within the costs of the contempt, and also the costs of serving Lady Ferrers, and of Miss Thornhill's journey to London to see the Lord Chancellor.

*Baily and Rowell* for the guardians; *Cairns and Rowell* for Mr. Chichester.

The Lord Chancellor said, the charge against Mr. Chichester was, of having endeavoured clandestinely to remove Miss Thornhill from the custody of her guardians with the view to a private marriage, and motions had been made to restrain such removal, and to commit for

contempt. It was a fallacy to treat the motion for an injunction as a separate proceeding, as it was only a step in the relief sought from the Court. The costs of the affidavits on the motion for an injunction come therefore within the scope of the order for payment of the costs of the contempt, and the report of the Master in that respect must be reviewed. As to the other items disallowed, the Master was right.

*In re Hedges.* Jan. 12, 13, 1855.

##### **MAINTENANCE OF INFANT OUT OF FUND PAID IN UNDER TRUSTEES' RELIEF ACT.**

*Held, that a Judge at Chambers has not jurisdiction under the 15 & 16 Vict. c. 80, s. 26, to make orders as to the maintenance of an infant out of a fund which has been paid into Court, under the 10 & 11 Vict. c. 96, without a petition being presented.*

THIS was an application, by direction of Vice-Chancellor Wood, on the question whether an allowance for the maintenance of an infant, out of a fund which had been paid into Court under the Trustees' Relief Act, 10 & 11 Vict. c. 96, could be continued without a petition being presented.

By the 15 & 16 Vict. c. 80, s. 26, it is enacted, that "the business to be disposed of by the Master of the Rolls and Vice-Chancellors respectively, while sitting at Chambers, shall consist of such of the following matters as the Judge shall from time to time think may be more conveniently disposed of in Chambers than in open Court, viz.," "applications as to the guardianship and maintenance of infants."

*Turner and Roupell, jun.*, for the several parties. *Cur. ad. vult.*

The Lord Chancellor said, that the jurisdiction in such cases arose under the Trustees' Relief Act, which expressly provided that the proceedings should be by petition. The Masters in Chancery Abolition Act only gave jurisdiction to do at Chambers that which had been formerly done by the Court, but there must be the same foundation for such orders at Chambers as in Court, and that in cases like the present was by petition.

#### Lords Justices.

*In re Cameron's Coalbrook Steam Coal and Shewases and Loughor Railway Company, ex parte Green.* Jan. 13, 1855.

#### APPEAL UNDER WINDING-UP ACT AFTER EXPIRATION OF THREE WEEKS.

An application was dismissed, with costs, for leave to appeal from the decision of the Master of the Rolls after the expiration of the three weeks limited by the 12 & 13 Vict. c. 108, s. 33, although it was suggested that the decision on which his Honour proceeded had been questioned in a recent case by the Lords Justices.

This was an application for leave to appeal from the decision of the Master of the Rolls in this case, notwithstanding the expiration of more than three weeks, limited by the 12 & 13 Vict. c. 108, s. 33.<sup>1</sup>

Fredergast in support, on the ground that the decision on which the Master of the Rolls had proceeded had been questioned in a recent case by the Lords Justices.

Rozburgh contra.

The Lords Justices said, that the words of the Statute were positive, and the application must be dismissed, with costs.

#### Vice-Chancellor Kindersley.

*Ex parte Perpetual Curate of Bruton.* Jan. 12, 1855.

#### RAILWAY COMPANY. — PURCHASE-MONEY OF GLEBE LANDS, WHERE UNDER 200*l.* — COSTS.

Certain glebe lands were taken by a railway company, and the purchase-money, amounting to 154*l.* was paid into Court and not to trustees, under the 8 & 9 Vict. c. 18, s. 71 : Held, that as there was no evidence of the perpetual curate having refused to comply with the section and nominate trustees, the company were liable for the costs of such payment in and of the order on petition for payment of the dividends to the perpetual curate.

<sup>1</sup> Which enacts, that "no notice of motion for a rehearing before the Lord Chancellor of Great Britain or Ireland respectively of any order of the Master of the Rolls in England or Ireland, or of any of the Vice-Chancellors in England, under the said Act or this Act, shall be given after the expiration of three weeks after the order complained of shall have been made."

This petition was presented for the payment to the perpetual curate of Bruton, of the dividends on 154*l.*, the purchase-money of certain glebe lands taken by the Great Western Railway Company.

Messiter in support.

Osborne for the company, contra, as to costs, referring to the 8 & 9 Vict. c. 18, s. 71, which enacts, that "if such purchase-money or compensation shall not amount to the sum of 200*l.*, and shall exceed the sum of 50*l.*, the same shall either be paid into the bank, and applied in manner hereinbefore directed, with respect to sums amounting to or exceeding 200*l.*, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands, in respect whereof the same shall be payable, such nominations to be signified by writing, under the hand of the party so entitled."

The Vice-Chancellor said, that in the absence of all evidence of refusal by the petitioner to comply with the requirements of the section, the company must pay the costs as asked.

#### Vice-Chancellor Stuart.

*Beavan v. Earl of Oxford.* Jan. 15, 1855.

#### REGISTRATION OF JUDGMENT UNDER 1 & 2 VICT. C. 110. — SUFFICIENCY AS AGAINST SUBSEQUENT INCUMBRANCERS.

In a writ of summons the defendant's name was set out as Lord Edward H., and the appearance was entered as Lord Alfred H., and a Judge's order to enter up judgment was drawn up in the name of Lord Edward H. and was so registered. It was, however, afterwards registered as against Lord Alfred H., sued as Edward Lord H. : Held, sufficient under the 1 & 2 Vict. c. 110, as against subsequent incumbrancers.

A writ of summons was issued in November, 1839, against Lord Edward Harley and was duly served. The appearance was entered as Lord Alfred Harley, and a Judge's order to enter up judgment was afterwards given, under which it was entered up as against Lord Edward Harley, and was registered in that name in February, 1840. It was, however, afterwards registered as against Lord Alfred Harley, sued as Edward Lord Harley. A question now arose, whether the judgment was valid as against subsequent incumbrancers.

Bevir for the plaintiff; Kemplay for the judgment creditor; Bacon, Cole, Toller, Rogers, and Speed for the other creditors.

The Vice-Chancellor said, that the registration was sufficient notice to the subsequent incumbrancers of the judgment, and was therefore valid under the 1 & 2 Vict. c. 110.

#### Vice-Chancellor Wood.

*Boyer v. Colclough.* Jan. 13, 1855.

#### STAYING TRIAL OF ISSUE AS TO VALIDITY OF WILL PENDING APPEAL FROM IRISH DECISION.

*A motion was refused to stay the trial of an issue as to the validity of a will, relating to English and Irish estates, until the decision of the House of Lords on an appeal from the Irish Court, as to the Irish estates.*

THIS was a motion to stay the trial of the issue directed in this suit, as to the validity of a will relating to English and Irish estates. It appeared that an appeal was pending from the decision of the Irish Court as to the validity of the will, and it was now sought to stay the trial pending the appeal.

*J. V. Prior* in support; *Rolt* and *Cairns*, contra.

The *Vice-Chancellor* said, that the question was for the discretion of the Court: *Nerot v. Burnand*, 2 Russ. 56; *Suisse v. Lord Lowther*, 2 Hare, 439. The parties might desire the trial of the issue before the argument of the appeal, as the decision of the jury might be influenced by the judgment of the House of Lords. It was besides desirable that no delay should intervene, as the parties might be put to much inconvenience by the death of any of the witnesses. The motion would therefore be refused.

*Esparte Governors of Hawkins' Hospital, Chatham.* Jan. 13, 1855.

#### INVESTMENT IN CONSOLS OF PURCHASE-MONEY OF HOSPITAL LANDS.

*Upon lands belonging to a hospital being taken by a dock and railway company and the purchase-money, amounting to 440*l.*, paid into Court, an order was made on petition for the investment of the same in consols in the names of the governors, and for the dividends to be paid them as on their other stock.*

THIS was a petition for the investment by the Accountant-General in consols, in the names of the governors of this hospital for the relief of aged or decayed seamen, of a sum of 440*l.*, the purchase-money of certain lands taken by the Thames Haven Dock and Railway Company, and paid into Court. It appeared that there was a considerable sum already invested in consols, and it was sought to have this amount added, and the dividends thereon received together with the rest.

*Speed*, in support, referred to the 8 & 9 Vict. c. 18, s. 73, which enacts, that "all sums of money exceeding 20*l.*, which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him, absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid."

The *Vice-Chancellor* made the order, as asked.

#### Court of Queen's Bench.

*Regina* (on prosecution of *Rector of St. James, Westminster*) v. *de la Beche*. Jan. 13, 1855.

#### LIABILITY OF GEOLOGICAL MUSEUM TO POOR-RATE.—EXCLUSIVE OCCUPATION OF THE CROWN.

*Held, on special case, that the Museum of Practical Geology, which was built on a portion of the Crown lands at the public expense, and kept in repair by the Commissioners of Public Works, and the expenses defrayed by the Lords of the Treasury out of an annual Parliamentary vote, is not liable to be rated to the poor under the 43 Eliz. c. 2, notwithstanding the students paid 20*l.* on entrance and 20*l.* a year, and the professors who delivered lectures were allowed to receive a portion of such sum.*

THIS was a special case as to the liability of the Museum of Practical Geology, in Jermyn Street, Piccadilly, to be rated to the poor under the 43 Eliz. c. 2. It appeared that the building was erected at the public expense by a parliamentary grant on land which formed a portion of the hereditary domains of the Crown, and that it was kept in repair by the Commissioners of Public Works, and the expenses defrayed by the Lords of the Treasury out of funds annually voted by Parliament. The museum contained models of machinery for working mines and specimens of rocks, ores, and minerals, and lectures were delivered by professors, who received, besides the sum paid them by the Treasury, a portion of the fees paid by students, and which were 20*l.* on admission and 20*l.* a year.

*Pashley* and *Keane* in support of the rate; *Attorney-General* and *Willes* contra.

The Court said, that as the property was in the exclusive occupation of the Crown for public purposes, it was not liable to be rated. Her Majesty was seised in fee simple, and although the Commissioners were entitled under the 8 & 9 Vict. c. 104, to take and use the property, it was not for the purpose of occupation, but only to manage. There was only a user by certain persons with the sanction of the Lords of the Treasury, but no beneficial occupation in any one. In point of fact, there was no distinction between this case and that of the British Museum, or Royal Academy, and the appellants were therefore entitled to judgment.

*Regina v. the Justices of the East Riding, Yorkshire.* Jan. 13, 1855.

#### MANDAMUS.—RETIRING PENSION TO CHAPLAIN OF HOUSE OF CORRECTION.

*The chaplain of a house of correction had resigned and a successor was appointed, but he afterwards applied for a retiring annuity under the 4 Geo. 4, c. 64, s. 32, on the ground that his resignation was caused by age or infirmity, and at a subsequent session a motion was carried for the same by a majority of 9 to 7 jus-*

tices. At the adjourned sessions notice was given to rescind this vote at the ensuing sessions, which was accordingly done by a large majority: A rule was made absolute for a mandamus on the treasurer to pay the annuity.

*Quære, whether the order was bad for not specifying whether the incompetency arose from age or from infirmity, and also that it was made too late?*

THIS was a rule nisi for a mandamus on the defendants to pay to the Rev. Wm. Hildyard the amount of an annuity, which had been granted to him under the 4 Geo. 4, c. 64, s. 32, on resigning the office of chaplain to the House of Correction at Beverley. It appeared that he was appointed in 1817, and had written a letter in December, 1852, resigning the appointment, and that a successor had been appointed. He afterwards applied for a retiring pension under the above Statute, and an order was made accordingly for an annuity of 60*l*. by a majority of 9 to 7 justices. It, however, appeared that at the adjourned sessions, notice was given to rescind this order, which was done by a large majority, whereupon this rule had been obtained.

Sir *F. Thesiger, Watson, and Perronet Thompson* showed cause, on the ground that the resignation was not caused by confirmed sickness, age, or infirmity, but because he was in pecuniary difficulties, that the order did not set out whether the incompetency arose from age or infirmity, and that it had been made too late.

*Bramwell and Hawkins* in support.

The Court said, that as there was some doubt the rule would be made absolute for a mandamus, in order to have the questions decided.

#### Court of Common Pleas.

*Pearce v. Blagrove.* Jan. 11, 1855.

ACTION FOR MONEY LENT AND PAID TO DEFENDANT'S USE. — STATUTE OF FRAUDS.

On an execution being put in the rooms of the plaintiff's tenant, he requested the plaintiff to pay it out, and on his refusing, the brother-in-law (the defendant) was sent for, who said to the plaintiff, "If you will pay the money for me, I will pay you again on Monday." Held sufficient to support an action for money lent, and for money paid to the defendant's use, and a rule was refused to set aside the verdict for the plaintiff.

THIS was a motion to set aside the verdict for the plaintiff, and for a new trial of this action, which was brought for money lent, and for money paid to the defendant's use. It appeared on the trial before *Jervis, L.C.J.*, at the last Guildhall sittings, that a Lieutenant Sayer had taken rooms in the plaintiff's house, and that upon an execution having been put in at the suit of his tailor, he had requested the plaintiff to pay it out, and on his refusal the defendant, who was his brother-in-law, was sent for. It appeared that he said to the plaintiff, "If you will pay the money for me, there is a good fellow, I will pay you again on Monday." An objection was overruled to this being received in evidence as insufficient under the Statute of Frauds, and the plaintiff obtained a verdict.

*Byles, S. L.*, in support.

The Court said, that the money was advanced by the plaintiff for the defendant, and the rule must be refused.

### ANALYTICAL DIGEST OF CASES,

#### SELECTED AND CLASSIFIED.

#### SCOTCH APPEALS TO HOUSE OF LORDS.

##### APPEAL.

*See Cross Appeals.*

##### CONTRACT.

*Duties arising by law distinguished from those by contract.*—Where the law casts a duty on a man which, without fault on his part, he is unable to perform, the law will excuse him for non-performance.

But where a man, by his own contract, binds himself to do a thing, he is bound to do it, if he can—notwithstanding any accident—because he ought to have guarded by his contract against it. *Clark v. Glasgow Assurance Company*, 1 Macq. 668.

##### COVENANT TO REPAIR.

*And to rebuild on accidental fire.*—*Real burden.*—Where a conveyance by a feu-contract contains a covenant that the purchaser shall keep the premises in repair,—if the premises

are accidentally burnt down, he is bound to rebuild them.

A subsequent taker from the first purchaser will be similarly bound, if it appear that the obligation was intended to run with the land and form a real burden on the property. *Clark v. Glasgow Assurance Company*, 1 Macq. 668.

##### CROSS-APPEALS.

Remarks of the Lord Chancellor as to the time limited for bringing cross-appals to the House of Lords. *Clark v. Glasgow Assurance Company*, 1 Macq. 668.

##### HEIR OF ENTAIL.

*Power to alter order of succession and impose new fetters.*—*Lord Rutherford's Act.*—The opinion of Lord Justice Clerk Macquenn, that a person holding an estate under an entailing deed, is at liberty to do everything with it which he is not by the instrument expressly interdicted from doing, held to be erroneous.

The instrument under which he takes,

though not in all respects perfect, will be the measure of his demission, and the law of his enjoyment. Hence, he cannot alter the order of succession or impose new fetters on those who succeed him.

Where an heir of entail has erroneously made up his title under an instrument which he subsequently finds to be invalid, he is not thereby precluded from instituting proceedings to have it set aside, and to have the proper instrument established. *Menzies v. Menzies* (the Culleres case), Haile's rep. 969, approved.

The 43rd section of 11 & 12 Vict. c. 36, commonly called "Lord Rutherford's Act," is not retrospective. *Urquhart v. Urquhart*, 1 Macq. 658.

#### INTERPRETATION.

*Of words in England and Scotland.*—*Semble*, Terms of art may have different significations in England and Scotland; but popular language meant to express ordinary agreements ought to have the same interpretation on both sides of the Tweed; and where the English Courts have for a long time attached a certain meaning to certain words, the Scotch Courts, having no decision to the contrary, may safely follow them. *Clark v. Glasgow Assurance Company*, 1 Macq. 668.

#### JUDGMENTS.

*Fraudulently obtained.*—*When affirmed by House of Lords.*—Where a judgment has been obtained by fraud, and more especially by the collusion of both parties—such judgment although confirmed by the House of Lords, may, even in an inferior tribunal, be treated as a nullity.

But the allegations of fraud and collusion must be specific, pointed, and relevant; otherwise they cannot be admitted to proof.

To set aside a judgment had by fraud, the proper course, when such judgment has been confirmed by the House of Lords, is to apply to the House for direction.

Hence it is wrong to ask the Court below, upon proof of the fraud or collusion, to set aside a judgment confirmed by the House.

Whether the House, in such a case, can direct an issue, *quære*? *Shedden v. Patrick*, 1 Macq. 535.

Case cited in the judgment: *Meadows v. Duchess of Kingston*, Amb. 756.

#### LEGITIMATION.

*Per subsequens matrimonium.*—*From what period it operates.*—*Alien Statutes.*—*Children without parents.*—By the law of Scotland legitimation *per subsequens matrimonium* operates only from the time of the marriage, not from the time of the birth.

*Semble*, that the ancient fiction, which supposed an interchange of matrimonial consent at the moment of conception, is not sanctioned by the law of Scotland.

*Semble*, that the doctrine of mid-impediments is also without foundation in the law of Scotland.

*Semble*, that by the law of Scotland, if the

mother of a bastard, instead of marrying the father of the bastard, marries another man, who dies,—she can afterwards, by marrying the father of the bastard, render the bastard legitimate from the date of her second marriage, but not from the date of the bastard's birth.

*Semble*, *Kerr v. Malcolm*, Sec. Ser., vol. 2, p. 764, approved of by the House.

A child born a bastard in a foreign country not recognising the doctrine of legitimation *per subsequens matrimonium*, is an alien, although his putative father was a Scotchman domiciled all his life in Scotland, and although such putative father afterwards married the mother of the bastard for the express purpose of rendering the bastard legitimate.

The children of natural born subjects, who, under the 4 Geo. 2, c. 21, are to be considered natural born subjects of this kingdom, must have been legitimate from their birth, and not rendered so by the subsequent marriage of their parents.

To be within the Act, the child must be born of a British father; but a bastard, *natus filius*, can have no father. *Shedden v. Patrick*, 1 Macq. 535.

#### "OWNER."

See *Waterworks*.

#### POOR RATE.

See *Waterworks*.

#### PUBLIC DECISIONS.

*Of Superior Courts of Justice.*—*Semble*, that the Imperial Legislature may be taken to have cognisance of the decisions of the Superior Courts of Justice—especially when they relate to questions of a public nature. *Edinburgh Water Company v. Hay*, 1 Macq. 652.

#### SOLICITOR.

*Undertaking conflicting duties.*—Remarks by the Law Poets on the danger which arises from the assumption by professional persons of duties which conflict with each other. *Shedden v. Patrick*, 1 Macq. 536.

#### SPECIFIC PERFORMANCE.

Method of compelling the specific performance of agreements in Scotland and form of prayer. *Clark v. Glasgow Assurance Company*, 1 Macq. 668.

#### STATUTE.

*Retrospective operation.*—In general, Courts of Justice will be slow to ascribe a retrospective operation to any Statute. *Urquhart v. Urquhart*, 1 Macq. 658.

#### WATERWORKS.

*Assessment to poor-rate.*—Import of word "owner" in 8 & 9 Vict. c. 83.—Under the 8 & 9 Vict. c. 83, a waterworks' company are liable to assessment for relief of the poor, as owners and occupants of the land through which their pipes ran.

The word "owner" occurring in the Act does not necessarily mean owner of the fee. It may mean the owner of a partial interest. *Edinburgh Water Company v. Hay*, 1 Macq. 682.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—“Still attorneyed at your service.”—*Shakespeare.*

SATURDAY, JANUARY 27, 1855.

### LIMITED LIABILITY PARTNERSHIPS.

#### WHAT SHOULD BE THE FRAME OF THE LAW TO ESTABLISH THEM?

WE cannot doubt but that any of our readers who have given even slight attention to this subject, must see that “family creditors” advancing capital to the trade, ought, in justice to the general trade creditors of a concern, to be postponed to such trade creditors. The “family” capital, worked by the trader and in his “reputed ownership,” is the real thing to which trade credit has been given; and it is, therefore, *the* thing which eminently and *preferentially* should pay the trade debts. Our law now allows, however, that a large slice of it should be withdrawn from the trade creditors, under the shape of a dividend to itself. Is this right or not? Now this question will be found to be the same question as that of the propriety of allowing limited liability partnerships to be established; at least to include such second question.

If the trader's books are rightly and fairly kept, he opens a “capital account,” and makes the trade debtor to “capital,” and “capital” debtor to his father, uncle, &c.; and when he fails “capital” (or that which remains in the trade after paying the debts) should, in all justice, and, according to the very books themselves, be the re-payer. Now, this is exactly the state of things arrived at under a system of limited liability or commandite partnership. Those who (agitated by a fear of opposition to their own trades, or by some phantom of their own creating) oppose the allowance, by our law, of the system under consideration, profess to do so for the benefit of trade creditors; whereas, in fact, they are arguing in the most direct

opposition to the just claims of those creditors, to have “the concern” first applied to pay the debts of the concern, and not as now, in great measure to be set apart to replace itself; so as, perhaps, out of the dividend taken in competition with the trade creditors, to start itself over again in business.

We have premised this much, by way of introducing a few comments on the report of the Committee of the Law Amendment Society, on the paper of Mr. Edgar we lately published, and, indeed, on Mr. Edgar's paper itself. The report and paper propose to establish the principle of postponing the right of the family creditor (we use this term as denoting all who really are capital advancers) to those of ordinary trade creditors, only very partially and permissively; and to do it, as far as they do it at all, through regulations affecting the mode of bringing in the capital—of registering the facts of partnership—the name of the firm—the business, &c., &c.—with the registrar of joint-stock companies. This seems to us altogether a mistake; and now that some legislation is about to take place it is very desirable that the true basis of legislation should be well canvassed. This true basis lies, we believe, simply in correcting the error our law has made, in saying that all who participate in the profits of a business shall be personally liable to its debts, *even notwithstanding that the creditors never dreamt of these participators being partners, or gave a particle of credit on their responsibility.* This erroneous rule (which has no base in natural justice) drives those who would otherwise desire to be secret partners, into the position of “family creditors,” taking—now there is no usury law—a large share of the profits in the shape

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of interest, at any rate, and  
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creditors. In this way, the  
creditors are hence, who interest, on the  
secret partners. The true creditor and of  
other hand, of the trade should be as many  
the public is, that there should be as many per  
secret partners as possible — as many per  
sons as possible, that is, who are content  
to advance capital into trades, and to back  
those trades and help them, and link their  
interests to them, on condition that they  
rank for what they advance, against the  
assets, not *pari passu* with, but *after and*  
behind all the trade creditors. If we could  
legislate at all beyond the point of allowing  
this, it would be of some one particular  
not for the purpose of some one particular  
adventure in trade (as is the case in every  
speculation carried on by the ordinary  
union of creditor and debtor), but being  
for the permanent continuing service of the  
trade (that is for its capital), should always  
rank after and behind the trade creditors,  
whether the advancer put himself in the  
situation of a family creditor or not. But  
the proposal we are considering, on the con-  
trary, takes quite the opposite view; and  
treats the right of the family creditor as  
irrefragable; and his *subsidence* into the  
position, more honest towards the public, of  
secret partner; as being a favour to him to  
be granted only on imposing special terms,  
and voluminous and intricate returns and  
registration observances. These special  
terms too, are such as are of no kind of use  
to the public; and yet they place great  
difficulty in the way of that very 'subsidence'  
which the public has so much to  
desire; for the proposed special terms  
wherever such are established, practically  
make it very difficult that those who intend  
to be only secret partners, should be able  
to be sure that nothing has been or shall be  
done which can impose on them a general  
liability; and therefore they prevent the  
useful working of such a law.

Limited Liability Partnership  
Ireland, and all the cases in which it has  
been cited will illustrate the mischief of the  
public requiring in mercantile matters  
things to be done in which it, the public,  
has no real or deep interest; but the whole  
value of which lies really between the partners  
themselves; or between the partners  
and those who, with eyes open, deal with  
them: a criticism this, by the way, applica-  
ble to most of the mercantile enactments  
statutory, or by charter of the Board of  
Trade.

What, then, should be the frame of the  
proposed law?

Make the ostensible partner sole owner  
at law; and enact that secret partners shall  
only have an equitable *cestuique trust*  
right against the assets, and shall not be  
liable to the partnership debts; and that  
the ostensible partner shall not have any  
right to pledge their personal credit, and  
shall be criminally responsible if he at-  
tempt to do so;—and, as to private asso-  
ciations, the law will, we think, have ac-  
complished all it should do; unless, indeed,  
the larger amendment of the Law of Debtor  
and Creditor, which would postpone the  
rights in liquidation of a family creditor or  
other capital lender, to those of ordinary  
trade creditors, should also be made.

Charters, and the principles on which  
incorporation should be granted, ought to  
be considered and dealt with separately.  
They and the Joint-Stock Acts form a dis-  
tinct branch of the inquiry.<sup>1</sup>

<sup>1</sup> All our law (except bankruptcy) exhibits  
a surprising want of accordance with the theory  
and understandings of trade among mer-  
chants. This is manifest on the whole system  
of bookkeeping. If we look at all the ac-  
counts, "Capital," "Profit and Loss," &c.,  
as indicating (as in bookkeeping and mercan-  
tile theory they do), individuals entitled to that  
which the books attribute to them, and from  
the funds assigned, results arise totally at vari-  
ance with what the law awards. The creditor  
has, by the books, all the assets assigned to him  
to pay his debt: but by the common law his

**"The effect (says a recent pamphlet, speaking on such special terms in American law) of these restrictive rules in leading creditors, after a failure of a commanditory partnership, to hunt over all its acts and returns to find a chance for dragging a limited partner into a general liability; although in giving credit, his liability was no item in consideration; is one proof of the folly of statutory articles of partnership."**

Our Joint-Stock Company Acts have raised the same kind of question here ; and *Taylor v. Hughes*, before Sir E. Sudgen in

## NEW ORDERS IN CHANCERY.

## EXAMINATION OF WITNESSES.—EVIDENCE.—AFFIDAVITS.

THE Right Honourable Robert Monsey Lord Cranworth, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Sir John Romilly, Master of the Rolls, the Right Honourable the Lord Justice Sir James Lewis Knight Bruce, the Right Honourable the Lord Justice Sir George James Turner, the Honourable the Vice-Chancellor Sir Richard Torin Kindersley, the Honourable the Vice-Chancellor Sir John Stuart, and the Honourable the Vice-Chancellor Sir William Page Wood, doth hereby, in pursuance and execution of the powers of an Act of Parliament passed in the 15 & 16 Vict., intituled "An Act to amend the Practice and Course of Proceeding in the High Court of Chancery," and of all other powers enabling him in that behalf, order and direct that all and every the rules, orders, and directions hereinafter set forth shall henceforth be and for all purposes be deemed and taken to be General Rules and Orders of the High Court of Chancery, viz. :—

*Introductory.*

I. The course of proceeding prescribed by the 15 & 16 Vict. c. 86, and the General Order of the 7th August, 1852, with respect to the mode of examining witnesses and the practice of the Court in relation thereto, are altered in the manner and to the extent prescribed by these Orders, but not further or otherwise.

II. The Orders numbered respectively, 31, 32, 33, comprised in the General Order of the 7th August, 1852, and all other Orders and parts of Orders, so far as such other Orders and parts of Orders are inconsistent with these Orders, but not further or otherwise, are hereby abrogated and discharged.

III. All former Orders and parts of Orders, not specified in Order Two, so far as the same are now in force, and consistent with these Orders, are to remain in full force and effect.

*Evidence.*

IV. It shall not be competent for the plaintiff or any defendant to require, by notice or otherwise, that the evidence to be adduced in a cause shall be taken orally, but when issue shall have been joined in any cause the plaintiff and defendants re-

spectively shall be at liberty to verify their respective cases, either wholly or partially by affidavit, or wholly or partially by the oral examination of witnesses, before one of the examiners of the Court, or before an examiner to be specially appointed by the Court.

V. The evidence on both sides in any cause to be used at the hearing thereof, whether taken upon affidavit or orally, (and including the cross-examination and re-examination of any witness or witnesses), is to be closed within eight weeks after issue joined therein, except that any witness who has made an affidavit intended to be used by any party to such cause at the hearing thereof shall be subject to cross-examination within one month after the expiration of such period of eight weeks.

VI. No affidavit or deposition filed or made before issue joined in any cause shall, without special leave of the Court, be received at the hearing thereof, unless within one month after issue joined, or within such longer time as may be allowed by special leave of the Court, notice in writing shall have been given by the party intending to use the same, to the opposite party, of his intention in that behalf.

VII. In suits in which issue shall have been joined when these Orders take effect, the evidence to be used at the hearing of the cause shall be taken according to the present practice of the Court, unless the parties shall consent to, or the Court shall order, that the same shall be taken in the altered mode prescribed by these Orders.

*Affidavits.*

VIII. All affidavits, whether to be used at the hearing of a cause, or on any other proceeding before the Court, are to state distinctly what facts or circumstances deposed to are within deponent's own knowledge, and his means of knowledge, and what facts or circumstances deposed to are known to or believed by him by reason of information derived from other sources than his own knowledge, or what such sources are.

IX. The costs of affidavits not in conformity with the preceding Order, are to be disallowed on taxation, unless the Court should otherwise direct.

X. These Orders shall be deemed to apply as nearly as may be to evidence taken after the hearing of a cause, as well as to evidence taken previously, and with a view to such hearing.



XI. These Orders shall take effect on and after the 21st January, 1855.

CRANWORTH, C.  
JOHN ROMILLY, M.B.  
J. L. KNIGHT BRUCE, L.J.  
G. J. TURNER, L.J.  
RICHARD T. KINDERSLEY, V.C.  
JOHN STUART, V.C.  
WILLIAM PAGE WOOD, V.C.

## INNS OF CHANCERY.

### TRUSTS FOR THE BENEFIT OF ATTORNEYS.

HAVING in our last Number presented to our readers a brief statement of the origin and nature of such of the Inns of Chancery as are still in full force and operation, we proceed now to notice several other of these minor Inns which have been for some time in *abeyance*, but which seem capable of being revived for the benefit and improvement of that branch of the Profession to which the members of those Inns belonged.

In the first instance, it may be useful to abridge from the authorities on these subjects, the past history of these suspended societies, and hereafter submit for consideration the claims of the Profession to an improved management of all these Inns of Chancery,—whereby we believe the *ancient trusts* on which the property of these societies is held, can be carried into beneficial effect, as well for the good of the attorneys and solicitors in particular, and the credit of the Profession in general, as for the promotion of the administration of justice and the public advantage:—

#### THAVIE'S INN.

This Inn was a residence for students in the time of King Edward 3rd, as appears by the last will and testament of John Thavie, who died in that reign. In the reign of Edward 6th, George Nicholas, citizen and mercer of London, granted the property to the Benchers of Lincoln's Inn, and their successors, for the *use of the students of the law*; after which time it was demised to the principal and fellows of Thavie's Inn, which society had been, it would seem from Fortescue, one of the lesser houses of Lincoln's Inn, for some centuries previously, at an annual rent of 3*l.* 6*s.* 8*d.* In 1769, Thavie's Inn was sold by the Benchers of Lincoln's Inn to Mr. Middleton. It was subsequently destroyed by fire, and a range of private buildings now occupies its site.<sup>1</sup>

#### FURNIVAL'S INN.

Furnival's Inn was anciently the residence

of the noble family of Furnival, and was demised by them to certain *students of the law*, who occupied it in 9 Henry the 4th. The inheritance of it having passed to Francis Earl of Shrewsbury, it was sold by him on the first of December, 1 Edward 6th, in consideration of 120*l.*, to Edward Griffin, Esq., the Solicitor-General to the King, William Ropre, and Richard Heydone, Esqs., and their heirs, to use of the Society of Lincoln's Inn. From this time the principal and fellows of Furnival's Inn paid to the Society of Lincoln's Inn the yearly rent of 3*l.* 6*s.* 8*d.* The Inn was rebuilt in the reign of James 1st, and the Society continued to occupy it till the year 1817. In that year, some of the old buildings having been partly destroyed by fire, and others having partly fallen down, a new lease of the whole of the ground was granted for 99 years, at a rent of 500*l.* per annum and 76*l.* land tax redeemed, to Mr. Henry Peto, who erected the present buildings.

The members or fellows of Thavie's Inn and Furnival's formerly enjoyed some privileges at Lincoln's Inn. In 7 Eliz., by an order of the Bench at Lincoln's Inn, the admission of utter Barristers was fixed at 40*s.*, while fellows of these two Inns of Chancery who had mooted two Vacations there at the utter Bar were to pay only 13*s.* 4*d.*, and gentlemen of those two houses might, after their admittance in Lincoln's Inn, stay two years in those houses, paying their pensions during those two years, and should be discharged of casting into commons, and of all Vacations and charges of Christmas during the time of their stay in Lincoln's Inn, for those first two years.

Sir William Jones, Chief Justice of Ireland, afterwards a Justice of the Common Pleas and King's Bench in England, was for two years a student in Furnival's Inn previously to his admission to Lincoln's Inn.<sup>2</sup>

The present ground rent payable to Lincoln's Inn is 500*l.* a year. On the expiration of the lease the value will be increased to 6,000*l.* and upwards.

#### LYON'S INN.

This was an Inn of Chancery, as early as the time of Henry 5th. In the time of Queen Elizabeth, it contained 80 students in Term, and 30 out of Term, and readings and mootings were observed with great regularity. Sir Edward Coke was for some time reader at Lyon's Inn, and his portrait is hung up in the hall. The learned Selden was chosen as reader of this Inn of Chancery, but he refused to read, and in consequence of his refusal, was in the year 1624, fined 20*l.* by the Benchers of the Inner Temple, and excluded from commons. The Hall of this Inn is now used by the students of the four Inns of Court, for the meetings of forensic societies, which meet weekly during the greater part of the year, for the discussion of legal and historical

<sup>1</sup> Stow, 430; Dugdale, 271; Pearce, 209; 3 Foss, 385.

Stow, 427; Dugdale, 270; Pearce, 210; 4 Foss, 142, 279.

questions; an annual rent rent being paid by each society, for the use of the Hall.<sup>3</sup>

We shall take an early opportunity of stating the conclusions which may be reasonably urged in favour of the attorneys and solicitors in reference to the arrangements which may be effected, with regard to these societies, either under the authority of the present Commission, or a Committee of the House of Commons, to which, in all probability, the subject will be hereafter referred.

### SOURCES OF THE CIVIL LAW.

IN noticing last week the Manual of Civil Law, by Dr. Humphreys, we extracted some of the historical remarks of the author on the sources from which the *Corpus Juris Civilis* was deduced. The other sources of this famous system of jurisprudence are,—the Opinions of Writers “learned in the Law;” the Edicts of the Prætors; the Constitutions or Ordinances of the Emperors; the Code of Theodosius; the Code of Justinian; and the Digest of Basilus. Dr. Humphreys thus describes these various works:—

“The *Responsa Prudentum* (otherwise called *jus receptum*, or *recepta sententiæ*) were the opinions or interpretations of men learned in the law (*juris prudentes*), illustrating the laws of the Twelve Tables. These interpretations, like the reports and precedents quoted in our Courts, came to be regarded, in course of time, as portions of the law. This practice of giving legal advice is said to have originated with T. Coruncanus, the first plebeian Pontifex Maximus (A. U. C. 470); and became general in a short time. (See Horace, *Epist.* 2, 1, 103.)

“*Edicta* where the proclamations issued at the commencements of their several years of office by the prætors and curule ædiles, and informing the public of the principles upon which they intended to administer justice; and may, therefore, be regarded as so many additions to and modifications of the laws, which the increase and mixture of the population rendered necessary. The city prætor (*urbanus*) administered justice, with the assistance of a jury (*judices*), between citizens exclusively; and the foreign prætor (*peregrinus*), first elected on the acquisition of a foreign province (*Stoily*), sat to adjudicate upon all questions arising between foreigners, and between foreigners and citizens, and founded his decisions, not so much upon Roman law, as upon the *jus gentium*. This new element in Roman jurisprudence, known by the name *jus honorarium*, i. e. the law of the magistrates, eventually ob-

tained so much authority, that it superseded in general estimation even the laws of the Twelve Tables. It happened, however, that as every successive prætor considered himself at liberty to take an arbitrary course, and make regulations for himself, the edict of one was frequently altered very considerably, or altogether set aside, by that of another; and, accordingly, we find that, in the reign of Hadrian, Salvian Julianus was commissioned by the emperor to draw up an edict which was to remain permanently in force, and to be the guide of all succeeding prætors. This was called the *Edictum perpetuum*. When a portion of a former edict was continued in the succeeding year, it was called *Edictum tralatitium*; and, when the edict was altogether new, *Edictum novum*.

“The *Constitutions*, which were, in some degree analogous to the *Edicta*, consisted of the proclamations and ordinances which were published by the several emperors under the various titles of *Decreta*, *Edicta*, *Rescripta*, &c. These Constitutions, from the reign of Hadrian to that of Constantine the Great, were collected and arranged by Gregorius (or Gregorianus) A. D. 306, and, subsequently, with some additions by Hermogenes (or Hermogenianus) A. D. 365; and these collections, though not actually and formally recognised by any legislative sanction, appear to have been regarded as works of considerable authority.

“The *Theodosian Code*, which appears to have been suggested by the collections of Gregorius and Hermogenes, occupies a very important position in the history of Roman jurisprudence. The vast accumulation of laws and commentaries, of various degrees of authority, had attained such a magnitude, that a methodical collection and digest became a matter of necessity; and Theodosius the Second, the grandson of Theodosius the Great, appointed a commission of eight men skilled in the law, under the direction of Antiochus, to compile a code which should embody all the Constitutions of the emperors from Constantine to that date, extending over a period of 126 years. The Commission sat for nine years, and the result of their labours was publicly sanctioned and invested with the authority of law, in March A. D. 438.

“It may be mentioned that Theodosius was Emperor of the East only, having placed his cousin and son-in-law, Valentinian, on the throne of the West; and that a document is still in existence, giving an account of the reception and sanction of the Code by the Roman Senate, when presented to them by the Consul Anicius Cælius Glabrio Faustus.

“In A. D. 506, an abridgment of the Theodosian Code, generally known as the *Adriani Breviarium*, was prepared under the superintendence of Count Goaric, by order of Alaric, king of the Visigoths, for the use of his Roman subjects in Spain and Gaul. This abridgment, the several copies of which seem to have been attested by the signature of Arianus, who held some confidential appointment under the king, was illustrated by a commentary, and is the

<sup>3</sup> Stow, 493; Dugdale, 187; Penree, 265; 4. Bess, 189.

principal source from which succeeding authors have derived any knowledge from the Theodosian Code. It has been frequently republished, with various additions and comments, in later times: sc. by Sichardus at Basle, in 1528; by Du Tillet at Paris, in 1550; by Cujacius, with the addition of some novels, at Lyons, in 1566; by Godefroy of Geneva, its principal expounder, and continued by Professor Marville, in 1665; by Professor Ritter, with a commentary, at Leipzig, in 1745; and all these, together with some mutilated portions of the Theodosian Code and some novels, discovered by Professor Peyron in the Library of Turin, and by Professor Clossius at Milan, were methodised and republished by Professor Wenck, at Leipzig, in 1825.

"The Justinian Code was a digest of all the preceding codes and constitutions, prepared by the Commissioners, who were invested with a discretionary power, under the superintendence of Tribonian, to revise and epitomise their materials according to their judgment. This task, which was undertaken in A. D. 528, was completed in the April of the following year, and was declared by an imperial sanction to supersede all previous codes and collections whatever. Immediately after the completion of this work, Tribonian was again employed, at the head of a Commission of 16 jurists, to execute another, involving considerably more skill and labour. This was the preparation of a digest of legal science, not from the constitutions or edicts, but from the commentaries of celebrated lawyers, such as Sabinus, who lived in the time of Augustus; Caius, who lived in the reigns of Hadrian and the Antonini; Papinian, who lived under Septimius Severus; and his pupils, Paulus, Ulpianus, and Modestinus. In the short space of three years, this work was completed in 50 books, notwithstanding the difficulties occasioned by diversities of opinion among the old jurists, which it was found necessary for the emperor to reconcile and decide by the promulgation of his *quingaginta decisiones*. And in 533 it was published under the name of the *Digesta* or *Pandecta*, and so sanctioned as to have the force of law.

"Justinian, however, considering his great work of codification still incomplete, commissioned Tribonian, Theophilus of Constantinople, and Dorotheus of Berytus (*Beirut*) to draw up an elementary work from the Code and Pandects, for the more convenient use of law students, which is now known as the Institutes. He also employed Tribonian with four others to revise the first Code (that of 530), and incorporate with it the *fifty decisions*; and this revised edition, published and sanctioned in 534, under the name of the *Codez repetita prælectionis*, is the only form in which the Code has come down to our time. In addition to all these, Justinian published, in the course of the succeeding ten years, not less than 164 *Novellæ Constitutiones*, which were principally written in Greek, and are now generally known as the novels of Justinian.

"Both the Code and the Pandects of Justinian were subsequently translated into Greek; the former by Theophilus, probably the same lawyer who was employed in its compilation by the emperor; and the latter by Stephanus of Constantinople, who is also believed to have been a member of the original Commission.

"The *Basilicæ* (*Constitutiones*) was a digest undertaken in A. D. 867, by the Emperor Basilus the Macedonian, with a view to supply the inhabitants of the Eastern Empire, whose vernacular language was Greek, with a new and intelligible manual of the laws by which they were governed. Basilus, however, did not live to witness the completion of the work, which was eventually published, shortly after his accession in 886, by his son Leo the Philosopher. Of this digest, which was recognised as law only in the Eastern Empire, several translations and editions have been published in later times; the most remarkable of which are those of Cujacius, edited by Labbé, at Paris, in 1609; of Talrot, at Paris, in 1647; of Dr. Heimbach of Jena, at Leipzig, in 1833."

## LAW OF ATTORNEYS AND SOLICITORS.

### RESTORATION TO ROLL, AFTER STRUCK OFF FOR MISCONDUCT.

It appeared that the petitioner was employed by the sole assignee on the bankruptcy of one Powell, to manage the whole business of the bankruptcy, and that at the meeting in December, 1840, the assignee rendered his accounts on oath, which had been prepared by the petitioner, showing a balance of 234*l.* only as due, and the accounts were passed and the amount divided among the creditors as a final dividend. It, however, afterwards transpired, that the account was incorrect in various particulars, several sums received by the petitioner not having been accounted for, and after an investigation, the assignee was charged with a sum of 184*l.*, which was paid by the petitioner.

An application was then made in 1842, by the President of the Birmingham Law Society, to strike the petitioner off the roll, and Lord *Langdale* directed the name to be struck off.

In April, 1843, the petitioner went to the United States, for the purpose of practising there, but finding he could not practise until after a residence of three years, he returned to England in September, 1844. In April, 1845, he commenced the business of a share-broker at Manchester, and was afterwards elected to the office of

Chairman of the Stock and Share Exchange, an office of a very responsible and influential nature; but in February, 1846, he resigned the office in consequence of certain parties circulating rumours relating to the order of 1842, and he subsequently was compelled to abandon his business.

He presented a petition in 1847, praying to be restored to the roll, but Lord *Langdale*, who heard it, died without giving judgment, and the petitioner then became managing clerk to a firm of solicitors of Birmingham, with whom he had continued.

The present application was supported by affidavits of a justice of the peace, a banker, and the incumbent of St. Mary's Birmingham, as to his honourable and upright conduct, together with a memorial signed by 86 attorneys and solicitors of the town, including the town clerk, the clerk of the peace, and the deputy clerk of the peace. The Committee of the Birmingham Law Society had, after due consideration of the case, come to the determination not to oppose the petition; and the Incorporated Law Society did not oppose.

The Master of the Rolls said—

"I have considered this case, and I have determined to restore this gentleman to the roll. Though he was very properly struck off, yet, considering the great length of time that has elapsed, and the great suffering he has endured by reason of the order, considering the testimonials to his good behaviour and conduct, and that the application is supported by so many solicitors of Birmingham, who have certified to that effect, and the absence of any opposition on behalf of that most useful and intelligent body in London, the Law Institution, I have come to the conclusion, that I shall best act by restoring this gentleman to the roll of solicitors.

"I sincerely hope, that the severe lesson he has received, will have the effect of making him act, for the future, with perfect straightforwardness and strict integrity in all his dealings; I therefore restore him to the roll, and an order may be made accordingly." *Amos*. 17 Beav. 475.

## LAW OF COSTS.

ACTION BY ATTORNEY IN SUPERIOR COURTS.  
—WHERE MORE THAN 20*l.* RECOVERED.  
—LONDON SMALL DEBTS' ACT, 1852.

ON the trial of an action brought by attorneys to recover 5*l.* 14*s.* 7*d.*, the amount of their bill of costs for presenting a petition under the Winding-up Acts, a verdict passed for the plaintiffs for the amount claimed, subject to taxation. By a Judge's order, the pro-

ceedings were stayed for 14 days, with liberty to the defendant to obtain the taxation of the bill of costs, and the order then provided, that "if on taxation the damages should be reduced to 50*l.* or under, the verdict shall be entered for the reduced sum, and the plaintiffs and defendant shall respectively have the same rights under the London County Court Act as they would have if the verdict had been found at the trial for the reduced sum." A reference was obtained at the Rolls for the taxation of the bill, which was reduced thereby to 41*l.* 5*s.* The plaintiffs afterwards obtained a rule to rescind so much of the Judge's order as related to the reduction of the damages on taxation, on the ground that the death of the Judge since the trial, precluded them from obtaining a certificate under section 119, that the cause was fit to be tried in the Superior Court, and that they were consequently unduly prejudiced. The defendant also obtained a rule for liberty to enter a suggestion under the Act, and for the plaintiffs to pay the defendant the costs of the taxation, more than a sixth having been taxed off.

The Court discharged both rules with costs, and held, that the 15 & 16 Vict. c. lxxvii., did not deprive an attorney, suing for his bill of costs in the Superior Courts, of the costs of the action where he recovered a sum exceeding 20*l.*; and that the application as to the costs of taxation could not properly be made to this Court, but should have been to the Master of the Rolls. *Borradaile v. Nelson*, 14 Com. B. 655.

## COMMON LAW COURTS.

### REGULATIONS AS TO PAYMENT OF MONEY INTO COURT.

IN the *Queen's Bench*, the money is paid into the bankers upon a printed request given at the Master's Office to the party.

IN the *Common Pleas*, the money is paid at the Master's Office in the same manner as heretofore.

IN the *Exchequer of Pleas*, on payment of money into Court, it is requested, that the exact amount be handed in, together with a separate sum for the fee.

The following are the fees payable at the several Courts on paying in money:—

|  |              |
|--|--------------|
| For every sum under 50 <i>l.</i> . . . . .     | 5 <i>s.</i>  |
| 50 <i>l.</i> and under 100 <i>l.</i> . . . . . | 10 <i>s.</i> |
| 100 <i>l.</i> and above that sum . . . . .     | 1 <i>l.</i>  |

## QUESTIONS AT THE EXAMINATION.

*Hilary Term, 1855.*

### I. PRELIMINARY.

1. WHERE, and with whom, did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal law books which you have read and studied.
4. Have you attended any, and what, law lectures?

### II. COMMON LAW AND PRACTICE OF THE COURTS.

5. Explain the nature of a Common Law action, and illustrate your explanation by an example.
6. State the parties to a bill of exchange— which of them is primarily liable, and what is the liability incurred by an indorser.
7. Does an indorser undertake to pay the amount of a bill at all events; and if not, what are the steps that must be taken by the holder to give him a right to sue the indorser in an action on the bill?
8. Within what period must an action to enforce a simple contract be brought? Is the time of limitation governed by the Statute or Common Law? Can a defendant take advantage of it, who has been the whole period out of the country?
9. What is the nature of a guarantee? Is it affected by the Statute of Frauds?
10. Is the contract for the sale of a horse for 10*l.* or more affected by the Statute of Frauds? and if so, must the consideration be expressed in the written agreement?
11. If a parol contract be made between A., on the part of C. and for his benefit, and B., in whose name must an action be brought to enforce the contract against B.; and would it make any difference if the contract were in writing, but not under seal?
12. Explain the nature of a set-off.—Is it governed by the Statute or Common Law?
13. Is it compulsory on a defendant to set-off his claim against the plaintiff's demand in an action brought by the plaintiff? or can he bring his action for the amount of his set-off?
14. To what amount have the County Courts jurisdiction;—and what is the name of the form of commencing an action in those Courts, as distinguished from that in use in the Superior Courts?
15. Must the service of the writ of summons on a defendant be personal, or will mere efforts to serve him be sufficient to enable the plaintiff to proceed in his suit; and state the practice on this head as it now obtains under the Common Law Procedure Act, 1852.
16. What is the nature and effects of a *chambers*?
17. Who are the proper persons to decide questions of fact in actions brought in the Superior Courts? and who are the proper per-

sons to decide questions of law in the same Courts?

18. Into what divisions is evidence usually classed? Are there any degrees of secondary evidence?

19. State the names of the Superior Courts of Common Law at Westminster. Have they concurrent jurisdiction in personal actions;—and if so, has the plaintiff the option of proceeding in either of them?

### III. CONVEYANCING.

20. State the heads of the conditions proper to be made on the sale of a freehold estate by public auction.
  21. What additional conditions are usually proper on the sale by public auction of a leasehold house in London?
  22. What is the proper distance of time for the commencement of your abstract, and why;—and in what cases must you go further back?
  23. What is the usual mode of verifying a pedigree?
  24. At what place must the title-deeds be produced for examination in the absence of stipulation; and who in that case is to bear the expense of journeys for their examination?
  25. In the absence of stipulation, who is entitled to the title-deeds of land contracted to be sold, which relate also to other land of greater value?
  26. Who should covenant for production of deeds not delivered to a purchaser?
  27. State the heads of the usual covenants, from a vendor to a purchaser of freehold estate.
  28. The like covenants from a vendor to a purchaser, and *vice versa* of a leasehold.
  29. What searches should be made before completing a purchase, and for how long back?
  30. If a purchase deed be executed by power of attorney, in whose name should it be executed, and what is it necessary for the purchaser to consider?
  31. Can a deed be altered to any, and what, extent after it has been executed by all, or any of the parties?
  32. How was dower barred before the Statute of 3 & 4 Wm. 4; and how since?
  33. State shortly the process of a recovery.
  34. As between a devisee and the executor of a testator, who is liable for a mortgage on the land devised made subsequently to the will? How has the law been lately altered?
- ### IV. EQUITY AND PRACTICE OF THE COURTS.
35. If a partner become lunatic, does the lunacy operate as a dissolution of the partnership, or entitle the other partner to any, and what, relief from the contract of partnership?
  36. State the mode of proceeding by which executors or administrators of deceased persons are enabled to ascertain whether there are any outstanding debts or liabilities affecting the estates of such persons without an administration suit.
  37. Can a solicitor, being one of several

trustees, under any, and what, circumstances, make professional charges for business done by him as a solicitor for the trustees?

38. State the different forms of defence to a suit in Chancery, and explain shortly the effect of each.

39. If in a suit or proceeding, it appear that a deceased person who was interested in the matters in question has no legal personal representative; has the Court any, and what, power of proceeding without requiring letters of administration to be obtained from an Ecclesiastical Court?

40. What is the course of proceeding upon a suit becoming abated by death, marriage, or otherwise, or defective by reason of some change, or transmission of interest or liability?

41. In a suit for an account, is it competent for the Court to direct that the books in which the accounts required to be taken have been kept, shall, to any, and what, extent be deemed evidence of the truth of the matters therein contained?

42. What is the course of proceeding, if upon default made by a defendant in not appearing to, or not answering a bill, it appear to the Court that the defendant is an infant, or of weak or unsound mind, not so found by inquisition?

43. In what case can a married woman be compelled to appear and defend a suit separately from her husband?

44. Upon an application for payment to the husband of money in Court belonging to the wife, what evidence is required in support of the application?

45. If previously to a decree a receiver be appointed, and the decree does not in any way notice the appointment; does this omission affect the continuance of the receiver?

46. Is a receiver liable under any, and what, circumstances for moneys belonging to the estate deposited by him with a banker who afterwards fails?

47. When the next friend of an infant plaintiff dies, and there is delay in appointing a new next friend, what is the proper course of proceeding by the defendant?

48. In what cases may a defendant be bound upon the service of a copy of the bill by all the proceedings in the cause?

49. State some of the principal cases in which it is no longer competent for a defendant to take any objection for want of parties to a suit.

#### V. BANKRUPTCY AND PRACTICE OF THE COURTS.

50. What three conditions are required to constitute a bankrupt?

51. Under what circumstances is an attorney or solicitor liable to the Bankrupt Law?

52. What are the grounds which determine whether a person is a trader within the meaning of the law in regard to the extent of his trading?

53. Describe the several Acts of Bankruptcy?

54. What are the Acts of Bankruptcy which a trader may voluntarily commit, and what the acts which he may be compelled to commit?

55. State the mode of proceeding in order to procure an adjudication in bankruptcy.

56. What are the requisites to support the petition of a creditor in order to obtain an adjudication against the bankrupt?

57. What are the consequences to a trader who becomes bankrupt a second time?

58. Must the petitioning creditors' debt be due and payable at the time of the act of bankruptcy, in order to support the petition for an adjudication?

59. Can a creditor who holds a mortgage as a security for his debt, be a petitioning creditor?

60. State what kinds of debts may be proved under a bankruptcy.

61. Have judgment creditors any, and what, priority over other creditors?

62. Are joint creditors entitled to prove on the separate estate of the bankrupts or separate creditors on the joint estate? And how can they interfere in the proceedings?

63. A trader has trade debts and assets, and private debts and assets. Are separate dividends to be paid to each class of creditors, or is there no distinction to be observed?

64. State the course of proceeding in the choice of creditors' assignees.

#### VI. CRIMINAL LAW AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

65. State concisely the distinction between such Acts as constitute crimes, and such as are regarded as civil injuries, and the several tribunals before which the former class are ordinarily prosecuted according to their nature and character; which, also, describe briefly.

66. In case of trial and conviction before an inferior jurisdiction, to what superior one does an appeal lie? and state the course of proceeding in such appeal.

67. Define the Acts which constitute the crime of embezzlement; the distinction between that offence and breach of trust, and state how each should be proceeded against.

68. Are there any, and what, circumstances which would convert what was a criminal offence into a civil debt?

69. Describe the offence of larceny, and state the distinction, if any, between grand and petty larceny.

70. State the distinction between perjury and subornation of perjury—what constitutes each offence, and the difference in punishment, if any.

71. Define briefly what constitutes a libel, and the redress to be obtained for it either civilly or criminally, and the course of proceedings in each case—and can the libeller be both prosecuted criminally and proceeded against civilly—and if so, for what reason.

72. Is the truth of a libel a sufficient defence to either a criminal prosecution, or civil action, or which? and if to either, state the reason.

73. What acts without personal violence constitute the offence of assault? What are the remedies to which the party assaulted is intitled? and state the course of proceeding and tribunals to which he may resort for redress.

74. May any, and what, crimes be compounded or compromised without subjecting the parties to prosecution, and would any, and what, precautions protect them against such a consequence?

75. Define the offences of simony and its penal consequences to the patron and clerk severally.

76. In case of a witness in a criminal prosecution, to whom does the privilege of confidential communication extend?

77. State the different modes by which a parochial settlement may now be obtained, and in what respects the law on that subject has been altered within the last 25 years.

78. What is the ordinary tribunal for ascertaining the disputed settlement of a pauper, and is there any appeal to any other, and what tribunal, and state the course of proceeding both originally and on appeal.

79. What is the general rule as to the place of settlement of a bastard child, and what are the exceptions, if any, to the general rule?

## ATTACHMENT OF DEBTS

### UNDER THE

### COMMON LAW PROCEDURE ACT 1854.

In the *Queen's Bench*, the Debt Attachment Book, in pursuance of the 66th section, is kept in the *Writ* department.

In the *Common Pleas* and *Exchequer of Pleas*, the Debt Attachment Book is kept in the *Judgment* department.

## SELECTIONS FROM CORRESPONDENCE.

### ALIEN.—COPYHOLDS.

*A.*, an alien, purchases a copyhold estate held of a manor belonging to an ecclesiastical see. The property is surrendered to a British born subject, but without any written declaration of the trust. The alien, the *bond fide* purchaser, dies. His heir, also an alien, in consideration of a small sum of money, then relinquishes his right to the tenant on the roll, who repudiated the trust and lately died.

Can the customary heir of the tenant make a title? or is the property liable to forfeiture and seizure by the Ecclesiastical Commissioners?

BETA.

### COSTS OF MORTGAGEE.

*A. B.* mortgages his leaseholds in Surrey for 200*l.* to *C. D.* *C. D.* offers the principal and interest to *A. B.*, who refers him to his solicitor, insists on payment of about 4*l.* for his

trouble, although *A. B.* requires no re-assignment and is content with the delivery up of the title-deeds, intending to cancel the mortgage-deed. Is the solicitor justified, under the circumstances, in making the demand, and could not the mortgagor recover back the money or the principal part of it? AMICUS.

### STATUTE OF LIMITATIONS.—COUNTRY BANK NOTES.

A firm of bankers in the country has lately thought fit to refuse payment of some of their bank notes to an extent exceeding 100*l.*, because forsooth they are dated above six years ago,—viz., some 15 years since.

Are they compellable to pay them, notwithstanding they are beyond the Statute of Limitations, and could the holder adopt the usual proceedings so as ultimately to issue a fiat in bankruptcy against the surviving partners (one being deceased) if not paid within the limited time? CIVIS.

### LOST WILL.

*A.* made his will about 15 years ago, prepared by his solicitor, of an eminent firm in the city, and the testator lately died, but the will is not forthcoming. Would it be practicable by proving the facts and the accuracy of the draft of the will, which can be produced, to obtain probate? A.

### MANOR OF KENNINGTON.—FINES ON BUILDING LEASES AND ENFRANCHISEMENT OF COPYHOLDS.

Referring to the letter of "Omicron," in a recent Number, I cannot resist expressing a wish that the Council of the Duchy would be consistent. The steward promulgated, in 1848, a tabular statement defining the fines to be demanded on the admission of new tenants to premises let on building leases. This land let at 5*l.* a year ground-rent where the improved annual value is 50*l.*, and where the lease has 30 years to run, a fine of 30*l.* 16*s.* 7*d.* would be taken on admission, being more than six years' ground-rent, and this notwithstanding a licence to demise. This is quite enough, in all conscience,—an attribute rarely flourishing, if existing at all, in public bodies.

Some offers have recently been made to enfranchise, and, rather inconsistently, the consideration for such enfranchisement is not in accordance with the above tabular statement, but, on the contrary, five years' rack-rent is demanded, being 250*l.*, whereas other lords of manors are content, and very properly so, to enfranchise on receiving a compensation of five years on a ground-rent of 5*l.*, being 25*l.* Is this fair, equitable, and just? I hope that the Council will see the propriety and necessity of setting an example worthy the exalted individual the lord of the manor, and that in future they will abstain from holding forth that noble character as a solitary exception to the rule.

AMICUS.

DEVIATION ON MARINE INSURANCES.

Considering the well-known objections taken by underwriters on marine policies, might it not be desirable to enact a law or to insert a clause in each policy enabling a ship to deviate from its direct course, with a view to relieve another vessel in distress, without avoiding the policy.

There are instances where a captain has been deterred, under the most appalling circumstances, from aiding a sinking vessel, under an apprehension that the deviation might affect the policy.

AMICUS.

ARTICLED CLERK.

Is there any objection to an articled clerk continuing a co-proprietor with his relations in a country newspaper published weekly at the distance of between 20 and 30 miles from the place of his abode?

BETA.

[We think there can be no objection, provided his attention to the newspaper affairs does not interfere with the discharge of his duty as an articled clerk in the usual hours of professional business.—ED.]

PUBLIC EXAMINATION  
OF THE  
STUDENTS OF THE INNS OF COURT.

At the Examination held at *Lincoln's Inn Hall* on the 8th, 9th, and 10th days of Jan., 1855, the *Council of Legal Education* awarded to—

Thomas Dundar Ingram, Esq., Student of Lincoln's Inn, a Studentship of Fifty Guineas per Annum, to continue for a period of Three Years.

John Simmonds, Esq., Student of the Inner Temple, a Certificate of Honour of the First Class.

J. W. Branson, Esq., Student of the Middle Temple; Boyd Kinnear, Esq., Student of the Inner Temple; R. A. Pritchard, Esq., Student of the Inner Temple; Robert Mackenzie, Esq., Student of the Middle Temple; Adolphus J. D'Allain, Esq., Student of Gray's Inn; Edwd. Henry Lovell, Esq., Student of the Middle Temple; and Joseph Park, Esq., Student of the Middle Temple, Certificates that they have satisfactorily passed a Public Examination.

By Order of the Council,

(Signed) RICHARD BETHELL,  
Chairman.

Council Chamber, Lincoln's Inn,  
15th January, 1855.

ATTORNEYS TO BE ADMITTED.

*Easter Term, 1855.*

*Queen's Bench.*

*Clerks' Names and Residences.*

*To whom Articled, Assigned, &c.*

- |  |   |
|--|---|
| 1. Allenby, Frederick George, 28, Great James-street; and Lincoln . . . . .                  | H. Williams, Lincoln  |
| 2. Anderson, Robert, Liverpool . . . . .   | W. Anderson, Liverpool  |
| 3. Ascroft, William, Preston . . . . .   | R. Ascroft, Preston   |
| 4. Atwood, John, Aberystrwith . . . . .  | W. C. Venning, T'oken-house-yard; and J. J. Atwood, Aberystrwith                    |
| 5. Bellingham, Edward Nugent, 51, Wharton-street, Lloyd-square; and Saffron Walden . . . . . | W. B. Fresland, Saffron Walden  |
| 6. Bennett, Francis Grey, Glossop . . . . .  | W. Bennett, Chapel-en-le-Frith  |
| 7. Booth, John the Younger, 5, Arthur-street, Old Kent-road; and Sherburn Grange . . . . .   | H. J. Marshall, Durham  |
| 8. Borough, John, New-street, Spring-gardens . . . . .                                       | W. Borough, Derby; and G. K. Freshfield, New Bank-buildings                         |
| 9. Boughton, John, 11, Chapel-street, Bedford-row; Grenville-street; and Ross . . . . .      | W. H. Collins, Ross   |
| 10. Boydell, Charles Field, 41, Queen-square, Bloomsbury . . . . .                           | T. Boydell, Queen-square  |
| 11. Burnett, Rob. F., M.A., 23, Upper Woburn-place . . . . .                                 | R. W. Lumley, and F. J. Nicholl, Carey-street                                       |
| 12. Clapham, Alfred Henry, 47, Baker-street, Lloyd-square; and Great Baddow . . . . .        | R. Bartlett, Chelmsford   |
| 13. Clarke, John Osmund, 23, New Ormond-street, Queen-square . . . . .                       | J. Gudgeon, Stowmarket  |
| 14. Clarkson, Richard, Bewdley . . . . .   | E. T. Clarkson, Calne   |
| 15. Clegg, Charles, Bradford; and Whitby . . . . .   | J. Clegg, Bradford  |
| 16. Clifton, George Henry, 13, Waverley-place, St. John's-wood . . . . .                     | F. Smedley, Jermyn-street   |
| 17. Clifton, John Henry, Redminster; and 2, Brunswick-place, Shepherd's-bush . . . . .       | J. J. Gutch, York; H. W. Ravenscroft, Gray's-inn-square; and J. B. Girling, Bristol |
| 18. Coham, Arscott Bickford, 27, Tysoe-street, Wilmington-square; and Parkstone . . . . .    | W. J. F. Marshall, Kettering; and W. Parr, Poole                                    |
| 19. Cooke, Richard, 12, Surrey-terrace, Lormore-road; and Stamford . . . . .                 | R. N. Thompson, Stamford; and G. L. P. Eyre, Montague-place                         |
| 20. Croome, Thomas Myers, 73, Park-street, Grosvenor-square; and Cainscross . . . . .        | T. C. Croome, Cainscross  |



*Clerks' Names and Residences.**To whom Articled, Assigned, &c.*

- |   |   |
|---|---|
| 21. Davies, Walter David, 23, Finsbury-square; and Austin-friars . . . . .                          | R. Hart, Austin-friars  |
| 22. Dixon, Ralph, 2, Bedford-street, Strand . . . . .   | T. Brown, Newcastle-upon-Tyne; and W. C. Bousfield, Gray's-inn-square |
| 23. Dobson, James Metcalfe, 22, Doughty-street, Mecklenburgh-square . . . . .                       | D. W. Wire, St. Swithin's-lane  |
| 24. Fairer, Christopher, Appleby . . . . .  | J. Weymas, Appleby  |
| 25. Ford, Gerard, Lincoln's-inn-fields . . . . .  | M. Ford, Lincoln's-inn-fields.  |
| 26. Foster, Wm. Chambers, 13, York-pl., Brompton; High Holborn; and Doctors' Commons . . . . .      | J. S. Newbon, Doctor's Commons  |
| 27. Fox, John, the Younger, 118, Great Russell-street, Bloomsbury; and Saint Bees . . . . .         | J. Brockbank, Whitehaven  |
| 28. Freer, Edward Hickman, 13, Acton-street, Gray's-inn-road; and Stourbridge . . . . .             | J. Harward, Stourbridge   |
| 29. Fulcher, Edmund Tyer, 7, Bloomsbury-place, Bloomsbury-square; and Stanhope-street . . . . .     | Ransom and Son, Sudbury   |
| 30. Gale, George, Kingston-upon-Hull . . . . .  | W. R. Dryden, Kingston-upon-Hull                                      |
| 31. Glanvill, Samuel, 7 and 9, Vincent-terrace, Pullen's-row, Islington . . . . .                   | H. Davy, Ottery St. Mary; W. H. Palmer, Bedford-row                   |
| 32. Godden, William, 8, Stanhope-place, Mornington-crescent; and Woburn-place . . . . .             | J. Tilleard, Old Jewry  |
| 33. Greaves, Albert, 11, Mornington-place, Camberwell-new-road . . . . .                            | W. Shepherd, Barnsley   |
| 34. Grece, Clair James, 22, Hampton-terrace, Hampstead-road; and Brighton . . . . .                 | D. Black, Brighton  |
| 35. Grenfell, George Pascoe, 12, Albion-terrace, Islington; and Penzance . . . . .                  | W. Borlase, Penzance  |
| 36. Griffith, John Robert, Llanrwst . . . . .   | W. Griffith, Llanrwst   |
| 37. Hansell, Peter Edward, 13, Southwood-terrace, Highgate . . . . .                                | H. Hansell, Norwich   |
| 38. Harris, Charles Rice, Tredegar . . . . .  | J. G. H. Owen, Pontypool  |
| 39. Hardisty, Robert Richard, 6, Sussex-terrace, Hyde-park . . . . .                                | W. Parke, Lincoln's-inn-fields  |
| 40. Hathaway, Philip, Wimbledon . . . . .   | J. E. Clowes, Temple  |
| 41. Head, Samuel Heath, 3, Elin-bank, Greville-road, Kilburn; and St. John's-wood . . . . .         | T. B. Hudson, Finsbury-place, South                                   |
| 42. Hill, William Money, 21, Guildford-street, Russell-square; and Mildenhall . . . . .             | Messrs. Isaacson, Mildenhall  |
| 43. Hooper, Edwin, 21, Doddington-grove, Kennington-park . . . . .                                  | H. W. Hooper, Exeter  |
| 44. Hughes, John, jun., 10, Chapel-street, Bedford-row; and Luton . . . . .                         | J. Hughes, Chapel-street; and Luton                                   |
| 45. Hughes, William Hastings, 7, Boltons, West Brompton; and St. Neots . . . . .                    | O. R. Wilkinson, St. Neots  |
| 46. Hurry, Henry, 215, Upper Thames-street . . . . .  | R. Jackson, Bedford-row   |
| 47. Jackson, Frederick, 18, Percy-circus, Pentonville; Camden-town; and Boston . . . . .            | M. Staniland, Boston  |
| 48. Jennings, Thomas Amas, 25, Gloucester-gardens, Paddington; and Stockton-upon-Tees . . . . .     | J. R. Wilson, Stockton-upon-Tees                                      |
| 49. Jones, John Hughes, 3, New Ormond-street; and Plus Own, near Mold . . . . .                     | P. Morris, Denbigh  |
| 50. Keighley, Samuel Jagger, 12, Compton-st., East; Brunswick-square; and Halifax . . . . .         | E. M. Wavell, Halifax   |
| 51. Kellock, Frederick, Stamford-hill; and Totnes . . . . .   | T. C. Kellock, Totnes; H. W. Reeves, Throgmorton-street               |
| 52. Kenyon, Edmund Peel, 23, Great Cornam-st., Brunswick-sq.; Stanhope-st.; and Liverpool . . . . . | J. B. Lloyd, Liverpool  |
| 53. Kipling, Alfred Upstone, 1, Devonshire-terr., New North-road; and Margate . . . . .             | J. H. Boys, Margate   |
| 54. Knight, Anthony, Cornwall-terrace, Regent's-park . . . . .                                      | E. B. Church, Southampton-buildings                                   |
| 55. Knight, Thomas Barnes, 5, Eden-terrace, Battersea . . . . .                                     | J. V. Harting, Lincoln's-inn-fields                                   |
| 56. Koe, Ralph Pemberton, 33, Gloucester-place, Hyde-park . . . . .                                 | J. H. Mousley, Derby; F. Mewburn, jun., Darlington                    |
| 57. Lee, Thos. Alder, 2, Strand; and Duckington . . . . .   | Lee and Rees, Witney  |
| 58. Macdonald, Alexander Cieland, 50, Southampton-row; Bedford-circus, Exeter . . . . .             | F. Sanders, Exeter  |
| 59. Macturk, George Gladstone, 28, Grove-place, Brompton; and Leeds . . . . .                       | J. Atkinson, Leeds  |
| 60. Mallam, George, 1, Staple-inn . . . . .   | T. Mallam, Oxford; and Staple-inn                                     |
| 61. Marrott, Thomas, 6, River-terrace, City-road . . . . .  | T. Lewis, Clement's-lane  |

*Clerks' Names and Residences.*

*To which Attended, Assigned, &c.*

- |   |   |
|---|---|
| 62. Moore, Thomas, jun., 2, Percy-circus, Pentonville; and Amphill-square                   | T. Moore, Yewil   |
| 63. Moorhouse, Christopher, 13, Arundel-street, Strand; and Congleton                       | J. Wilson, Congleton; N. C. Milne, Temple                                     |
| 64. Nash, Alfred Dormor, 14, Great Corn-street, Russell-square                              | J. I. Wathen, Bedford-sq.; H. Crocker, Chancery-lane; A. Mayhew, Carey-street |
| 65. Neve, John, jun., 28, Gower-place, Euston-square; and Wolverhampton                     | Messrs. Unett, Birmingham   |
| 66. Newbon, Thomas, 1, Wardrobe-place, Doctors' Commons; and Hammersmith                    | J. S. Newbon, Doctors' Commons.   |
| 67. Ollard, Richard Dawbarn, Upwell   | W. L. Ollard, Upwell  |
| 68. Pain, William Henry Bellew, 34, Englefield-road; and Islington                          | E. Pain, Greenham-street  |
| 69. Pennington, Richard, 3, Church-ter., Camberwell; Kendal; and Higham                     | G. Harrison, Kendal; W. S. Cookson, Lincoln's-inn                             |
| 70. Pickford, C. Cornelius Forbea, 51, Trinity-sq.; Union-sq.; Wootborne; and Burnley       | J. Pickford, Congleton; E. F. Ward, Burnley                                   |
| 71. Reynolds, Francis Samuel, 5, Mecklenburgh-street, Mecklenburgh-square                   | W. C. Reynolds, Great Yarmouth  |
| 72. Rogers, John Robert Fyde, 38, Great Ormond-street                                       | W. G. Roy, Great George-street  |
| 73. Rosher, Alfred, 11, Bedford-sq., Bloomsbury; and King-street                            | A. Van Saudau, King-street  |
| 74. Ruston, William, New Brentford  | J. Sewell, Chatteris; G. Clark, New Brentford                                 |
| 75. Sherman, Mark, 15, Compton-street, East, Brunswick-square                               | A. Sharman, Bedford; T. W. Turnley, Bedford                                   |
| 76. Sharp, Henry, Kingston-upon-Hull  | J. England, Kingston-upon-Hull  |
| 77. Smith, Henry Shawe, 72, Arlington-street, Camden-town; and Broughton                    | G. E. Maraden, Manchester   |
| 78. Smith, Joseph, 76, Albert-street, Regent's park; and Albany-street                      | R. Raper, Chichester  |
| 79. Smith, William Williams, 8, Rutland-street, Hampstead-road; and Cardigan                | J. Smith, Cardigan  |
| 80. Smith, William, Cambridge-st., Featherstone-buildings; Vine-hall; Argyle-sq.; Maidstone | E. Hoar, Maidstone  |
| 81. Tomlin, William, jun., 21, Great Percy-street, Pentonville; and Northampton             | C. Britten, Northampton   |
| 82. Tucker, Robert Coard, 4, Cecil-street; and Ashburton                                    | R. Tucker, Ashburton  |
| 83. Waddington, W. Oakley, 4, Middle Brunswick-terrace, Barnsbury-road                      | W. Foster, Liverpool  |
| 84. Walker, Leasowe, Scarcroft  | R. E. Payne, Leeds  |
| 85. Walker, William John, 25, Stockbridge-ter., Pimlico; and Pontefract                     | H. J. Coleman, Pontefract   |
| 86. Warren, John, Highbury-house, Islington   | R. A. Wainwright, New-square  |
| 87. Watson, Peregrine, 29, Tavistock-place, Tavistock-square; and Bedford-row               | B. Brock, Loughborough; J. R. Brown, Nottingham; F. F. Jeyes, Bedford-row     |
| 88. Welch, John Buna Kemp, 8, Store-street, Bedford-square                                  | M. K. Welch, Poole  |
| 89. Wharton, George Frederick, Manchester   | F. Thomas, Manchester   |
| 90. Wheeler, Frederick George, Stroud; 67, Stanhope-st., Hampstead-road; and Rutland-st.    | L. W. Winterbotham, Stroud  |
| 91. Whitaker, George, 16, Mount-st., Grosvenor-square; and Kingston-upon-Hull               | J. Earnshaw, Kingston-upon-Hull   |
| 92. Whitter, Tristram, 14, Soley-ter., Islington; Beuverie-street; and Tiverton             | T. L. T. Rendell, Tiverton  |
| 93. Wilson, Edmund Law Isaac, 37, Wharton-st., Lloyd-square; and Kendal                     | P. Harrison, Kendal   |
| 94. Wood, Henry, 52, Great Corn-street; Grenville-st.; and Manchester                       | J. Norris, Manchester; W. Norris, Manchester                                  |
| 95. Wyman, George, 12, Binfield-road, Stockwell; and Fletton, near Peterborough             | J. Broughton, Peterborough  |

*Added to the List pursuant to Judge's Orders.*

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|---|-----------------------------------|
| 96. Isaacson, Egerton, Rutland-street, Southwick-street; and Bernard-street               | J. R. N. Norton, Monmouth         |
| 97. Newman, James, 7, New Ormond-street; Barnsley; Hull; and New Boswell-court            | T. Ingle, Belper; A. Levett, Hull |
| 98. Saunders, Thomas, 24, Devonshire-street, Oxford-terrace, Islington; and Regent-square | C. F. Chubb, South-square         |

## ADMISSION OF SOLICITORS.

THE Master of the Rolls has appointed *Wednesday* the 31st of *January* instant, at the *Rolls Court, Chancery Lane, at four* in the afternoon, for swearing in Solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year, at the Secretary's Office, Rolls Yard, Chancery Lane, on or before *Tuesday*, the 30th instant.

## LONDON COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

Baker, Robert Boak, High St., Poplar, and Crosby Square.

Kaye, Charles, Russell St., North Brixton, and 4, Symond's Inn.

Raven, Samuel, 6, Northampton Place, Islington.

Smith, Henry, Richmond, Surrey.

## PROFESSIONAL LISTS.

### PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recoveries' Act, with dates when gazetted.*

Fiske, Edward Brown, Beccles, in and for the county of Suffolk. Jan. 5.

Patrick, Charles George Henry Saint, Worcester.

Prescott, George William, Stourbridge, in and for the county of Worcester.

### COUNTRY COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

*Appointed under the 16 & 17 Vict. c. 78, with dates when gazetted.*

Simmons, George Nicholls, Truro. Jan. 12.

Thimbleby, Thomas, Spilsby.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 26th Dec., 1854, to 19th January, 1855, both inclusive, with dates when gazetted.*

Avison, Thomas and William Pritt, Liverpool, Attorneys and Solicitors. Jan. 5.

Barlow, John and John Partington, Aston, Manchester, Attorneys and Solicitors. Jan. 2.

Cooper, John Martin and Douglas Cooper, Sunderland, Attorneys and Solicitors. Jan. 9.

Finch, John and Charles Shephard, 24, Moorgate Street, City, Attorneys and Solicitors. Jan. 2.

Foster, Ebenezer and Edmond Foster, 17, Green Street, Cambridge, Attorneys and Solicitors. Jan. 5.

Gabell, Arthur Richard and William Lewis, Crickhowell, Attorneys and Solicitors. Jan. 16.

Glyde, John the Younger, and William Glyde, Yeovil, Attorneys and Solicitors. Jan. 12.

Hilder, Edward Augustus, and George Matthews Arnold, Milton, next Gravesend, Attorneys and Solicitors. Jan. 12.

Janson, Frederick Halsey, and Charles Cooper, 4, Basinghall Street, City, Attorneys and Solicitors. Dec. 29.

Kingsford, Henry, Henry Coare Kingsford, and Thomas Norman Wightwick, Canterbury, Attorneys, Solicitors, and Conveyancers, so far as regards the said Henry Kingsford. Jan. 2.

Miller, James, and Anthony Carve, 24, Eastcheap, City, Attorneys and Solicitors. Jan. 2.

Parker, Thomas James, Thomas Smith the Younger, and Arnold Parker, Sheffield, Attorneys and Solicitors. Jan. 9.

Pemberton, Edward Leigh, and George Abraham Crawley, 20, Whitehall Place, Solicitors. Jan. 5.

Philipps, Henry and Edward Augustus Marsden, 4, Sise Lane, Bucklersbury, Attorneys and Solicitors. Dec. 29.

Rhodes, Charles Henry, James Lane, and Charles Henry Rownson Rhodes, 63, Chancery Lane, and 61, Gracechurch Street, Attorneys and Solicitors. Jan. 19.

Riches, Thomas Hurry, Charles Woodbridge, and Charles Woodbridge the Younger, Uxbridge, Attorneys and Solicitors, so far as regards the said Thomas Hurry Riches. Jan. 5.

Robins, George and John Warry, 7, New Inn, Strand, Attorneys and Solicitors. Jan. 2.

Roy, Richard, and William Gascoigne Roy, 4, Lothbury, City, and 28, Great George Street, Westminster, Attorneys and Solicitors. Jan. 16.

Staniland, Samuel, and Edward Atkinson, 30, Bouverie Street, Fleet Street, Attorneys and Solicitors. Jan. 2.

Sturney, Herbert, Henry Simpson, and Walter Stanton Bousfield, 8, Wellington Street, London Bridge, and 14a, Philpot Lane, City, Attorneys and Solicitors. Jan. 16.

Wright, Richard Seaton, George Frederick Smith, and John Shepherd, 15, Golden Square, Attorneys, Solicitors, and Parliamentary Agents. Jan. 2.

## SITTINGS IN THE QUEEN'S BENCH IN BANC.

THIS Court will, on Tuesday the 6th day of *February* next, and the two following days, hold *Sittings*, and will then proceed with the cases remaining unheard at the end of the Term, in the Special, Crown, and New Trial Papers, beginning with the New Trial Paper.

The Court will also hold a *Sitting* on *Thursday*, the 22nd day of Feb. next, for the purpose of giving Judgments only.

## NOTES OF THE WEEK.

## INCONVENIENCE OF THE COURTS AT WESTMINSTER.

Mr. Justice *Erle*, on 13th January, inquired of the Bar if it would be convenient to them to remove the business of this Court to the Court of Chancery, which was a much larger Court, and as he thought better fitted for conducting business at *nisi prius*?

Mr. *Chambers* and Mr. *James* expressed their opinion that this would be an improvement, and that the Bar would be much obliged to his lordship for suggesting the change.

The *nisi prius* business of this Court will therefore, in future, be conducted in the Court of Chancery.

## EXECUTION IN UNDEFENDED CAUSES.

At the sitting of the Court, on 13th January, Mr. Justice *Erle* stated, that, in future, in all undefended causes, where the parties applied for execution in four days, it would be issued; but if immediate execution were required, the application must be made on affidavit.

## NEW MEMBERS OF PARLIAMENT.

Sir *Samuel Bignold*, Knight, for Norwich, in the room of Samuel Morton Peto, Esq., who has accepted the office of Steward of her Majesty's Manor of Hempholme.

Sir *James Fergusson*, Bart., for the county of Ayr, in the room of Lieutenant-Colonel James Hunter Blair, deceased.

*Stephen Edward De Vere*, Esq., for the county of Limerick, in the room of Wyndham Gould, Esq., deceased.

*Thomas Henry Pakenham*, Esq., for the county of Antrim, in the room of Lieutenant-Colonel Edward William Pakenham, deceased.

*Henry Fenwick*, Esq., for Sunderland, in the room of William Digby Seymour, Esq., who has accepted the office of Recorder of the Borough of Newcastle-on-Tyne.

The Honourable *Henry Arthur Cole*, for the county of Fermanagh, in the room of Sir Arthur Brinsley Brooke, Bart., deceased.

## SCOTCH LAW APPOINTMENTS.

The Queen has been pleased to appoint *George Moir*, Esq., Advocate, to be Sheriff of the Shires or Sheriffdom of Ross and Cromarty, in the room of Thomas Mackenzie, Esq., resigned.—From the *London Gazette* of 19th January.

The Queen has been pleased to grant the place of one of the Lords of Session in Scotland to *James Craufurd*, Esq., her Majesty's Solicitor-General for Scotland, in the room of the Right Hon. Andrew Rutherford, deceased.

Her Majesty has also been pleased to grant the office of her Majesty's Solicitor-General for Scotland to *Thomas Mackenzie*, Esq., Advocate, in the room of James Craufurd, Esq., appointed one of the Lords of Session in Scotland.—From the *London Gazette* of 12th Jan.

## LAW APPOINTMENT.

*James Chaldecott Sharp*, Esq., Solicitor, has been appointed High Sheriff of the town and county of Southampton.

## COLONIAL APPOINTMENTS.

The Queen has been pleased to appoint *Hampden King*, Esq., to be one of the Judges of the Assistant Court of Appeal for the Island of Barbadoes, and *T. H. Bartley*, Esq., to be a member of the Legislative Council of New Zealand.—From the *London Gazette*, of 16th January.

## EXCESSIVE INCREASE OF FOREIGN LAWYERS.

Owing to the excessive number of lawyers in Hungary, permission to practise will be refused for one year to every new comer!

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lord Chancellor.

*In re Saitors' Fund.* Jan. 22, 1855.

SUITORS' IN CHANCERY RELIEF ACT.—  
PAYMENT OF PENSION BEFORE QUARTER DAY.

An order had been made under the 15 & 16 Vict. c. 87. s. 46, for a pension of 3,000*l.* a year to the senior registrar of the Court of Chancery, and which was payable under s. 50 on Feb. 3, May 3, Aug. 3, and Nov. 3. The Court made an order, on petition of the assignee of the pension for the benefit of the creditors, for payment of 800*l.*, the proportionate part due for two months, which was required for immediate distribution, without waiting for the day of payment.

THIS was a petition by Mr. Edward Doda Colville, the assignee for the benefit of the creditors of the pension of 3,000*l.* a year granted to Mr. Colville, the late Senior Registrar of this Court, under the 15 & 16 Vict. c. 87, s. 46, for payment of 800*l.*, the proportionate part due for two months, and which was required for immediate distribution, without waiting for the day fixed in s. 50 of the Act, and which enacts that, "except as herein otherwise provided, all compensation and superannuation, or retiring allowances under this Act shall grow due from day to day, but shall be payable on the 3rd day of February, the 3rd day of May, the 3rd day of August, and the 3rd day of November in every year, or on such other days as the Lord Chancellor shall from time to time by any order direct."

*Karslake* in support.

The Lord Chancellor, after having ascertained that there would be no inconvenience in the accounts in making the payment, said that the order might be taken as asked.

### Lords Justices.

*In re Hammond, ex parte Hammond.* Jan. 20, 22, 1855.

**BANKRUPT.—PARTY TO ACCOMMODATION BILLS.—FRAUD.—CERTIFICATE.**

*Mr. Commissioner Ayrton had suspended the certificate of a bankrupt for two years and then to be of the third-class and not to protect him against the holders of certain accommodation bills of which he was a party to a large amount. On appeal, the Court being of opinion that there was no trace of fraud, misrepresentation, or concealment in the bankrupt's transactions in regard to the bills, but only a certain degree of imprudence, suspended the certificate for two years, with protection and unconditional, and then to be of the second-class.*

THIS was an appeal from the decision of Mr. Commissioner Ayrton, suspending this bankrupt's certificate for two years, when it was to be a third-class one, and with a condition that it should not then protect him against the holders of certain accommodation bills. It appeared that the bankrupt was a flaxspinner, and that he had purchased pictures to the amount of nearly 18,000*l.*, upon which he had lost nearly 6,000*l.*, and that he had expended 14,000*l.* on his mills which were stopped by the explosion of a boiler. The Commissioner had founded his judgment on the objection to the bankrupt's having drawn, accepted, or exchanged accommodation bills to the amount of nearly 60,000*l.* within two years.

*Swanston and Little* in support; *Bacon* and *T. H. Terrell* for the assignees; *De Gez* for the trade creditors, *contra*, citing *Fentum v. Pooeck*, 5 Taunt. 197; *Ex parte Wilson*, 11 Ves. 410; *Ex parte Manico*, 3 De G. M. & G. 502.

The Lords Justices said, that the bankrupt had purchased the pictures for the purpose of selling again when an opportunity occurred. As to the accommodation bills, all the names were genuine and at the time good, and there was no trace of fraud, misrepresentation, or concealment in his transactions. This was not, however, to be construed into anything in favour of accommodation bills, as, on the contrary, when a bankrupt was found to have engaged in such transactions, his dealings would be subjected to the most rigid investigation, and he must give satisfactory explanations of them. There was in this case no ground of imputing to the bankrupt more than a certain degree of imprudence, and justice would be satisfied by a suspension of the certificate for one year with protection and unconditional, and then to be of the second-class. No costs to the

bankrupt, those of the assignees and of the opposing creditors, the latter not to exceed 20*l.*, to come out of the estate.

### Vice-Chancellor Kindersley.

*Hammond v. Ward.* Jan. 20, 1855.

**INJUNCTION TO RESTRAIN ACTION AT LAW.—DIRECTOR OF JOINT-STOCK COMPANY.**

*Upon an assurance company being wound-up, under the Winding-up Acts, the defendant, a provincial agent, sued the company for 100*l.*, and obtained judgment and execution, to which there was a return of nulla bona. The plaintiff, who was a director, gave the defendant a promissory note for the amount, upon which the defendant sued the plaintiff: A motion for an injunction to restrain such action was refused, with costs, although it was suggested that the defendant might, upon the winding up, be a debtor to the company.*

It appeared that upon the Amazon Assurance Company being wound up, under the Acts of 1848 and 1849, that the defendant, who was a shareholder and provincial agent, sued them for 100*l.*, and obtained judgment and execution, to which there was a return of nulla bona. The plaintiff, who was a director, then gave the defendant a promissory note for the amount payable on December 1 last, and on its not being paid, the defendant sued the plaintiff to recover the same, whereupon this motion was made for an injunction to restrain such action, upon the suggestion that when the company was wound up, the defendant might be a debtor to the company.

*Glassé and Haig* in support; *Swanston and Hallett*, *contra*; *Rosburgh* for the official manager.

The Vice-Chancellor said, that the plaintiff, whose liability was unquestionable, could not be allowed to speculate on the result of the winding up, and the motion must therefore be refused, with costs.

*Banks v. Davies.* Jan. 22, 1855.

**PAYMENT OF LEGACY OF WIFE TO SET UP HERSELF AND HUSBAND IN BUSINESS.—INDEMNITY TO TRUSTEES.**

*A minor had married a young person above 21, who was entitled to a legacy of 250*l.*, and consented to have it employed in a haberdashery and millinery business, which it was proposed to establish in a house in which they were promised to have rent free. Upon a petition by the minor and his wife, —entitled in his name as well as in the cause,—an order was made for payment without any insurance on his life.*

It appeared that upon the marriage of the petitioner, a minor, to the co petitioner, who was above 21, and entitled to a legacy of 250*l.*, that she was desirous it should be laid out in setting up a haberdashery and millinery business, in a shop they were promised to have

rent free. The question was, whether the trustees were safe in paying over the fund without an insurance on the husband's life.

Morris in support of this petition by the minor and his wife to obtain payment, and which was presented in the cause.

F. S. Williams for the trustees, referred to *Phillips v. Phillips*, 1 Kay, 40.

The Vice-Chancellor said, that as the wife consented to the payment without an insurance being effected, an order would be made as asked, upon the title of the petition being amended, by making it in the matter of the minor as well as in the cause.

#### Vice-Chancellor Stuart.

*Gore v. Bousser.* Jan. 15, 1855.

**EQUITABLE INTEREST OF DEBTOR IN LEASEHOLD LIABLE UNDER A FI. FA.**

Held, that an equitable interest in leasehold property may be taken under a fi. fa. issued on a judgment, although not registered under the 1 & 2 Vict. c. 110.

It appeared that in December, 1840, judgment was entered by the Rev. Charles Gore upon a warrant of attorney given by a Mr. William Sanders, and that a fi. fa. was afterwards issued, under which the sheriff seized certain leasehold property in which Sanders took an equitable interest. The Master having found that such property was not liable under the fi. fa., these exceptions were taken.

Craig and Moson for the plaintiffs in support; Malins, Shapter, Terrell, and Druce for the defendant, contra.

The Vice-Chancellor said, that an execution creditor was entitled to come to this Court and obtain execution against the legal interest of the trustee of his debtor, and the trustee would be compelled to convey so as to make the judgment at law available. The exceptions would therefore be allowed.

*Hughes v. Paramore.* Jan. 22, 1855.

**STATUTE OF LIMITATIONS.—WHAT A SUFFICIENT ACKNOWLEDGMENT OF UNSETTLED ACCOUNT.**

The testator, who had various transactions with R., signed the following memorandum: "It is agreed that Mr. Robinson, in his general account, shall give credit to Dr. Hughes for 174l., being for bricks delivered to the trustees of Park Place Chapel, Toxteth Park, in 1834." Held, sufficient under the 9 Geo. 4, c. 14, s. 1, to prevent the operation of the Statute, and to entitle the creditor to recover the balance.

It appeared that in September, 1845, the testator, who had various dealings with a Mr. Robinson in respect of building transactions, had signed the following memorandum:—"It is agreed that Mr. Robinson, in his general account, shall give credit to Dr. Hughes for 174l., being for bricks delivered to the trustees

of Park Place Chapel, Toxteth Park, in 1834. The Master had reported that this was insufficient to prevent the operation of the Statute of Limitations, whereupon these exceptions were taken.

Wigram and C. Hall, in support, cited the 9 Geo. 4, c. 14, s. 1, which enacts, that "in actions of debt, or upon the case grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the said enactments, or either of them, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing, to be signed by the party chargeable thereby."

Bacon, Malins, Amphlett, and C. M. Roupell, contra.

The Vice-Chancellor said, that in cases of an unsettled and continuing account, the Statute ran from the date of the last item; but as in the case of an account the right could only be to ascertain the balance, the right was on an unsettled account either to pay or to receive, and where there was an acknowledgment in writing of an open and unsettled account, it was evidence of a continuing contract, and would take out of the Statute the right of the creditor to recover the balance. The exceptions would therefore be allowed.

#### Court of Queen's Bench.

*Regina v. Saunders and others.* Jan. 20, 1855.

**LIABILITY OF FREESTONE QUARRIES TO BE RATED UNDER HIGHWAY ACT.**

*Certain freestone quarries were opened since the passing of the 5 & 6 Wm. 4, c. 50, and in the parish in question such quarries were usually rated to the highway rate:* Held, affirming the order of sessions, that the words of s. 27, "usually rated," meant in the particular parish, and that the quarries were liable to be rated.

It appeared from this special case reserved, that the defendants were the occupiers of certain freestone quarries in the parish of Corsham, Wilts, which were wholly underground, and worked and lighted by shafts and by a tunnel communicating with the Great Western Railway. It also appeared that the quarries had been opened since the passing of the 5 & 6 Wm. 4, c. 50, and were to be considered as mines, and that such mines had been usually rated to the highway-rate in the parish.

Hodges and Everett, in support of the rate, cited s. 27 of the Act, which provides that "the same rate shall also extend to such woods, mines, and quarries of stone or other hereditaments, as have heretofore been usually rated to the highways." Arney contra.

The Court said, that mines of this description were liable under the Act if it had been usual to rate them in the particular parish. The order of sessions would therefore be confirmed.

**Sadler v. Henlock.** Jan. 22, 1855.

**ACTION FOR INJURY THROUGH NEGLIGENCE OF DEFENDANT'S SERVANT.—EVIDENCE OF SERVICE.**

*The defendant had employed a man, who was supposed to have skill in drains, to open an old drain across the road opposite his house, and clean it, in order to draw off the water which settled in his garden, and he paid him for so doing. The plaintiff's horse fell into the place, and was injured: Held that the defendant was liable, as the man was his servant.*

THIS was an action to recover for the damages caused to the plaintiff's horse, in consequence of the negligence of the defendant's servant. On the trial at the last summer assizes at York, it appeared that the defendant had employed a man who was supposed to have skill in drains, to open an old drain which ran across the road opposite his house and clean it, in order to draw off the water which settled in his garden, and he paid him 5s. for the job. The plaintiff was afterwards riding past the place, and his horse was injured in consequence of the man having negligently filled up the opening. The plaintiff obtained a verdict with 10l. damages, whereupon this rule was obtained for a new trial, on the ground that the defendant was not liable, he having employed a contractor, citing, *Peackey v. Rowland*, 13 Com. B. 182.

*T. Jones* showed cause against the rule, which was supported by *Hugh Hill*.

The Court said, that the real question was what was the relation existing between the defendant and the man. If he were the defendant's servant, it was clear the defendant was liable. The defendant had employed him as a labourer, and ordered him to do the job, and might have given any directions as to the mode in which it was to be done. The man was therefore the defendant's servant for the time being, and the defendant was liable for his negligence. The rule would therefore be discharged.

**Court of Common Pleas.**

**Town v. Mead.** Jan. 18, 1855.

**GOODS SUPPLIED TO JOINT DEBTORS.—STATUTE OF LIMITATIONS, WHERE ONE ABROAD.**

*It appeared in an action for goods sold and delivered, to which the defendant pleaded the Statute of Limitations, that the causes of action accrued against two persons jointly, one of whom was in Canada at the time, and remained there until his death, and that the action was commenced within six years of his death. The other pre-deceased such party: Held, on demurrer to the replication, that the plaintiff was entitled to recover.*

THIS was an action for goods sold and delivered, to which the defendant pleaded the Statute of Limitations. The plaintiff replied that he causes of action accrued against one G. H. Mead and John Mead jointly, that the former was in Canada at the time the cause of action

accrued, and remained there until his death, and that the action was commenced within six years from his death, and that John Mead died before G. H. Mead.

*Bovill* appeared for the defendant in support of a demurrer to this replication; *W. H. Hodgson* for the plaintiff, contra.

The Court said, that the plea was no bar to the action, and that the plaintiff was entitled to recover, and the demurrer must be overruled.

**Court of Exchequer.**

**Hill v. Swift.** Jan. 17, 1855.

**COUNTY COURT.—PLAINT FOR BALANCE OF CLAIM.—AMENDING PARTICULARS.—JURISDICTION.**

*Upon an objection being taken to the jurisdiction of the County Court in a plaint, the Judge ordered the plaintiff's particulars of demand to be amended so as to reduce the demand to 50l. It appeared from the original particulars that the plaintiff gave credit for a sum of 43l. odd, leaving a balance of 53l. odd, and sought to recover 50l., the extent of the jurisdiction of the Court. By the amended particulars no credit was given for the 43l., but the action was stated to be brought to recover 50l. in satisfaction of the sum of 96l. odd, "the amount due on the following account, and I abandon the excess:" Held, that the Judge had no power to amend so as to give jurisdiction, and a rule was made absolute for a prohibition.*

THIS was a rule nisi to restrain the Judge of the Leeds County Court from proceeding in this plaint. It appeared from the original particulars that the whole claim was 96l. odd, and that the plaintiff gave credit for a payment of 43l. leaving a balance of 53l., and to the account was appended a notice that she sought to recover 50l., the extent of the jurisdiction of the Court. On the trial an objection was taken to the jurisdiction, whereupon the Judge ordered the particulars of demand to be amended so as to reduce the demand to 50l., but the amended particulars did not give any credit for the payment of the 43l. odd, and were preceded by this memorandum: "This action is brought to recover the sum of 50l. in satisfaction of the sum of 96l. 16s. 8d., the amount due to me on the following account, and I abandon the excess."

*Bliss* and *Kemplay* showed cause against the rule, which was supported by *Edwin James* and *Prentice*.

The Court said, that the Judge had no power to make the amendment, where its effect would be to give jurisdiction, but only in questions of variance between the evidence and the plaint or particulars. No doubt it was open to a plaintiff upon an objection being taken to the claim being for more than 50l., to abandon the excess and recover that amount, but he could not as in this case strike a balance not agreed on, and recover the excess. The rule would, therefore, be made absolute for a prohibition.

*Steel v. Haddock.* Jan. 18, 1855.

COMMON LAW PROCEDURE ACT, 1854.—  
EQUITABLE DEFENCE.—AFFIDAVIT.

*A rule was made absolute for leave to plead under the 17 & 18 Vict. c. 125, s. 83, to an action in trover for certain goods, the following plea: that the plaintiff being the proprietor of certain chemical works, sold the same to the defendant for a sum which it was intended should include the goods for which this action was brought, and which formed the stock on the works; that the brokers who drew up the bought and sold notes between the plaintiff and the defendant, by mistake, omitted to include the stock therein, and after the defendant had paid the purchase-money and received possession of the works and stock, the plaintiff unjustly claimed the latter, seeking to take advantage of the mistake in the written contract—with liberty to plaintiff to demur and reply thereto.*

Held, also, that there must be an affidavit in support of the facts disclosed in the plea.

THIS was a motion under the 17 & 18 Vict. c. 125, s. 83, for leave to plead an equitable plea to this action of trover for certain goods. The plea was as follows: that the plaintiff being the proprietor of certain chemical works, sold the same to the defendant for a sum which it was intended should include the goods for which this action was brought, and which formed the stock on the works; that the brokers who drew up the bought and sold notes between the plaintiff and the defendant, by mistake, omitted to include the stock therein, and after the defendant had paid the purchase-money and received possession of the

<sup>1</sup> Which enacts, that "it shall be lawful for the defendant or plaintiff in replevin in any cause in any of the Superior Courts in which, if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds to plead the facts which entitle him to such relief by way of defence, and the said Courts are hereby empowered to receive such defence by way of plea; provided that such plea shall begin with the words,—'For defence on equitable grounds,' or words to the like effect."

works and stock, the plaintiff unjustly claimed the latter, seeking to take advantage of the mistake in the written contract.

*Mellish* in support.

*Quain* showed cause in the first instance, and referred to the Statute of Frauds.

The Court said, that the only question now was, whether the plea should be placed on the record, where its validity would be tested. The rule would be absolute, but with liberty to the plaintiff to demur and reply to it, and there must be an affidavit of the facts disclosed therein.

*In re Chelsea Waterworks' Company.* Jan. 18, 1855.

LANDS' CLAUSES' ACT. — QUALIFICATION  
OF JURY ON ASSESSMENT OF DAMAGES.—  
CHALLENGE.

*A jury had been summoned under the 8 & 9 Vict. c. 18, to assess the compensation on a claim by the applicant against a waterworks' company, but on the day for hearing, only six jurymen attended, and the undersheriff summoned six others from the vicinity, who were sworn with the others, and made an assessment: Held, that the claimant could not now object to two of such jurors not being qualified, but that he should have challenged them at the hearing.*

THIS was a motion for a rule nisi for a prohibition on the sheriff of Surrey, against acting on an inquisition and assessment of compensation on the claim of Mr. Phillips, the applicant. It appeared that at the hearing, there were only six of the jurors attended, who were summoned under the 8 & 9 Vict. c. 18, upon the company and the applicant being unable to agree; and that the undersheriff thereupon summoned six others from the immediate neighbourhood, who were sworn with the others, and assessed the compensation. The applicant was dissatisfied with the assessment and moved for this rule, on the ground that two of such additional jurymen were not duly qualified.

*Shee, S. L.*, in support.

The Court said, that the remedy of the applicant was by challenge at the time, and that he had now no power to call in question the composition of the jury. The rule would therefore be refused.

## ANALYTICAL DIGEST OF CASES, SELECTED AND CLASSIFIED.

### HOUSE OF LORDS APPEALS.

#### ADMISSION TO PROOF.

*In Ecclesiastical Court, effect of.*—An order of the Ecclesiastical Court to admit a libel and exhibits to proof, is not a definitive sentence. *Gosling v. Veley*, 4 H. of L. Cas. 679.

#### ASSIGNMENT OF COPYRIGHT.

No assignment of copyright under the 8

Anne, c. 19, the benefit of which is claimed by the assignee, although from a foreigner, can be good in this country, unless it is attested by two witnesses; nor can there be a partial assignment of copyright. *Per Lord St. Leonards. Jefferys v. Boosey*, 4 H. of L. Cas. 815.

"AUTHOR."

See *Statute of Anne*.



## CHURCH-RATE.

1. A valid church-rate can only be made by an actual or constructive majority of the parishioners in vestry assembled, and if the majority should refuse to make a rate for the purpose of discharging the duty of repairing the fabric of the parish church, such refusal will not entitle the minority to make the rate. *Gosling v. Veley*, 4 H. of L. Cas. 679.

2. *After amendment refusing to make rate.*—At a vestry meeting assembled under a monition from the Ecclesiastical Court, to consider and make a rate for the repairs of the parish church, an estimate was produced by the churchwardens, and a rate of 2s. in the pound proposed by them. No objection was made to the estimate, but an amendment was passed by the majority that church-rates were bad in principle and ought to be refused, and the vestry did refuse to make a rate accordingly. The vicar, churchwardens, and certain others of the vestry, without taking any vote on the question, did afterwards produce and sign a rate of 2s. in the pound. *Held*, that the rate thus agreed to was invalid. *Gosling v. Veley*, 4 H. of L. Cas. 679.

And see *Libel*.

## COPYRIGHT.

1. Copyright did not exist at common law; it is the creature of Statute. *Per Lords Brougham and St. Leonards. Jefferys v. Boosey*, 4 H. of L. Cas. 815.

2. *Where foreigner or Englishman resides abroad.*—Copyright commences by publication; if at that time the foreign author is not in this country, he is not a person whom the Statute meant to protect.

An Englishman, though resident abroad, will have copyright in a work of his own first published in this country. *Jefferys v. Boosey*, 4 H. of L. Cas. 815.

And see *Assignment of Copyright; Musical Composition; Statute of Anne*.

## FOREIGNER.

See *Copyright, 2; Musical Composition; Statute of Anne*.

## LIBEL.

*In suit to enforce church-rate.*—In a suit to enforce a church-rate, the libel, after setting forth the refusal of the majority to make the rate, contained this allegation: "The churchwarden proposed addressing himself to those ratepayers who were willing to obey the monition, that a rate of 2s. in the pound should be paid by them, and a rate of 2s. in the pound is produced and signed by the vicar, the two churchwardens, and several ratepayers present. The mover of the amendment protested," &c.

*Semble*, that this allegation showed the rate to have been made by the minority; but, *held*, that to sustain the suit, the libel must show the rate to have been made by the majority of the vestry; for that no other rate is valid. *Gosling v. Veley*, 4 H. of L. Cas. 680.

## MUSICAL COMPOSITION.

*By foreigner residing abroad and assigned*

*there, and afterwards here.*—*B.*, a foreign musical composer, resident at that time in his own country, assigned to *R.*, another foreigner, also resident there, according to the law of their country, his right in a musical composition, of which he was the author, and which was then unpublished. The assignee brought the composition to this country, and before publication assigned it, according to the forms required by the law of this country to an Englishman. The first publication took place in this country.

*Held*, reversing the judgment of the Court of Exchequer Chamber, that the foreign assignee had not, by the law of this country, any assignable copyright here in this musical composition. *Jefferys v. Boosey*, 4 H. of L. Cas. 815.

## PARISH CHURCH.

*Duty of parish to repair.*—It is the duty of the parish to repair the fabric of the parish church, and the neglect or refusal to perform this duty will subject those who so neglect or refuse to punishment in the Ecclesiastical Court. *Gosling v. Veley*, 4 H. of L. Cas. 679.

## RATE.

*Onus of proving, on whom lies.*—In the Ecclesiastical Court the onus of proving a rate to have been rightly made lies on those who assert its validity, and if that validity is not affirmatively established, the Common Law Courts will prohibit the enforcement of the rate. *Gosling v. Veley*, 4 H. of L. Cas. 679.

## STATUTE OF ANNE.

"*Author.*"—*Foreigner.*—The object of 8 Anne, c. 19, was to encourage literature among British subjects, which description includes such foreigners as, by residence here, owe the Crown a temporary allegiance; and any such foreigner, first publishing his work here, is an "Author" within the meaning of the Statute, no matter where his work was composed, or whether he came here solely with a view to its publication. *Jefferys v. Boosey*, 4 H. of L. Cas. 815.

## VESTRY MEETING.

*Effect of irrelevant vote at.*—An irrelevant vote on a proposition submitted to a vestry meeting does not prevent those who gave it from afterwards voting on any other proposition relating to the same subject proposed at the same meeting.—Therefore,

A resolution passed by the majority in vestry to declare that no church-rate is necessary, and to refuse any such rate, does not disentitle the persons composing that majority to vote upon the question of any particular proposal for a rate made by any of the minority; and if a rate should be made by the minority alone, the votes of the other persons present not having been taken on it, such rate is bad. *Gosling v. Veley*, 4 H. of L. Cas. 679.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—"Still attorneyed at your service."—*Shakespeare*

SATURDAY, FEBRUARY 3, 1855.

### PRIVATE BILL LEGISLATION.

#### SECTOR AND TRUSTEE JOINT-STOCK COMPANY.

It is a remarkable fact, that in modern times the number of Private Bills has been considerably greater every Session than the Public Bills, although the projects for altering the law and effecting reforms or alterations, and alleged improvements in every department of the State have been enormously great. In all local and personal Acts, the general laws of the realm are more or less altered. Each application for powers not existing under the public Statutes, is confined to the personal objects of the promoters of the bill.

In supplying the wants of one town, hamlet, or parish, no attempt is made to confer the like benefit on other places similarly circumstanced. The application is purely selfish, and too often adapted to give an advantage to one body of men over another. The question only is, whether the petitioners have money enough and influence enough to carry the measure. What is everybody's business is nobody's; hasty and objectionable projects are successful because it is not sufficiently the interest of any one to incur the expense of a parliamentary opposition, and because it is the interest of the officers of Parliament and of a small body of solicitors and agents to promote private legislation. The members who are canvassed to support such measures are induced by various means to lend their assistance: some from friendship or good nature, some from the love of patronage and other inducements. The trouble and expenses of carrying a Bill through Parliament are enormous, and it is a very hazard-

ous affair to oppose a scheme which is well supported by parliamentary interest.

The remedy for the evil would be the constitution of a judicial Tribunal to examine into the grounds on which an exemption is claimed from the ordinary requirements of the law;—to receive evidence, and impartially decide the question, with due regard to the general interests of the community. Such a tribunal might be approached, not only by wealthy corporations and joint-stock companies, but by persons of comparatively limited means who are now precluded, by the costliness of legislative proceedings, from attaining the advantages which richer and more powerful persons or associations are able to secure.

An independent Court, constituted of eminent lawyers, and with the power of summoning a jury where the facts of the case were disputed, would not only be a great boon to the public, but beneficial to the Profession at large. It might be that the great Parliamentary Counsel, Solicitors and agents would suffer some diminution in their emoluments,—though such a result is not certain, for they would have a much larger number of cases to bring forward;—but the practitioners in general, who are rarely engaged in the present system of Private Bill Legislation, would then come in for a due share of the new business which would necessarily arise in an open Court of a judicial character where the fees of office and of the Bar, as well as other expenses, would be of moderate amount.

The claims would be heard in regular order;—there would be a distinct Bar; there would be no occasion to retain an unnecessary number of counsel, lest some of them,—engaged as they are now in various Committees,—should be absent when the

case came on. The Judges would be familiar with the legislative and judicial rules by which they ought to be guided, and thus delay, expense, and injustice to an incalculable extent would be saved to the community in general.

An able article in the new number of the *Edinburgh Review*, bears importantly on the project now about to appear before the House of Commons for incorporating a joint-stock company, under the name of "The Executor and Trustee Society." The statement and arguments contained in the *Edinburgh Review*, relate principally to Municipal, Parochial, and Railway Legislation, but the facts and arguments equally bear on all branches of Private Bill Legislation, whether for the remedy of defects of title, the incorporation of societies or joint-stock companies, or the parliamentary sanction of any other scheme or enterprise.

"It has been argued," says the Reviewer, "that in interfering at all by way of special statute,—dispensing, in favour of private persons with the general law,—Parliament necessarily acts against common justice; that Parliament ought not to dissolve a marriage valid by general law at the prayer of one only of the parties to the contract; that Parliament ought not to give a landed estate contrary to the expressed wishes of the testator or the settlor, and to the prejudice of persons yet unborn; and that it is equally unjust and arbitrary for a mere private Act of Parliament to compel me, against my own consent and the general law of the land, to surrender my property at the special demand of private adventurers. Either the redress sought by petitioners for private bills is *of right* and cannot be refused, or it is not so, and Parliament ought not to interfere." The writer continues:—

"A duke or a marquis has no more *right* to demand of Parliament to clear away the defects in the title to his land, so as to enable him to lease or to sell it, than the inheritor of the most wretched patrimony which has become embarrassed by mismanagement legal, blundering, or trickery. Even if any justification can be pleaded for our present divorce system, by which one single false step on the part of a wife suffices for the dissolution by the husband of the contract of marriage which remains unaffected by a whole life of profligacy, cruelty, and infamy on his part, the principles which are to govern divorces *à vinculo* ought in common decency to be uniformly applied to all parties under the same circumstances. Baronets and squires have no greater claim to obtrude their domestic grievances on the notice of Parliament, and demand a divorce from a frail spouse than a

shopman or an artisan. Either let the right to dissolve such solemn obligations be general, or let not Parliament make invidious exceptions in favour of those who are *able to pay* for a private Act. So with regard to property in land; let general laws regulate the principle on which it is to yield to the public exigencies, but let not Parliament, on behalf either of mere private individuals or commercial companies specially alter the ordinary course of the law, derogate from the rights of persons or of property, upset existing settlements, or force the occupier out of possession."

The laws of the land ought not, except in the most pressing emergencies, to be dispensed with by a private Statute in favour, or to the prejudice of any one.

It is proposed by Lord Brougham, that the Court or Board to which the investigation of the merits of Private Bills should be referred, should be appointed by the Crown apart from and independent of Parliament, and that it should consist of five members adequately remunerated, so "that the Crown may always obtain the aid of the most respectable members of the Legal Profession.

As Lord Brougham's resolutions profess to be framed with a view to preserve the privileges of Parliament, the reviewer proceeds to consider whether such privileges in the case of private Bills are of any constitutional value. He says—

"Parliament in the exercise of its present powers, with respect to private Bills, unless it act in an odiously arbitrary manner, only varies the existing laws on recognised general principles. It is not, strictly speaking, acting in a legislative so much as in a judicial or administrative capacity. The wise precedent of abandoning such questionable privileges has been over and over again recognised by Parliament, and by each of the great estates of the realm in its separate capacity. The Sovereign, in her own person, like Parliament, in its collective capacity, is placed by the constitution *above the law*, but in no point are the honour, dignity, and well-being of both more securely preserved than in guaranteeing to the subject that justice and the general law of the land shall in all cases alike take its even course, and be exclusively administered in regular tribunals and by competent and responsible Judges. Her Majesty in person consents in all cases to succumb to the law. The humblest subject has his practical remedy to demand justice at the foot of the throne. The Crown has for ages delegated ordinary judicial authority to independent Judges, and we have in modern times the peculiar case of the Judicial Committee of the Privy Council. Not all members of that right honourable body, but the Judicial Committee alone, are by recent Act of Parliament invested with the functions of

Judges forming a Court composed of the most able Judges of the land, and appealed to as readily on all matters within its jurisdiction as the Courts at Westminster.

"So, too, the House of Lords has for a long period voluntarily delegated its judicial functions to the *Law Lords*."

"And the House of Commons, in a branch of its constitutional power that it has ever most tenaciously vindicated in spite of all remonstrances, viz., the jurisdiction over questions of the due election of members, has, within the last 80 years, gradually submitted to the trial of controverted elections being regulated by a general law, and the inquiry into corrupt practices is by a recent Statute given to independent Commissioners appointed by the Crown."

Mr. Baxter, the eminent solicitor, recommends one permanent *judicial* tribunal for the numerous Select Committees formed under the present system :—

"You have now," says he, "practically to take your chance of your Committee. Sometimes you have a Committee of excellent men of business, and who are capable of presiding either at the Quarter Sessions or at a Committee, and who conduct the proceedings somewhat strictly, according to the rules of evidence, but in other cases you are not so favourably circumstanced. The counsel become irregular, of course the proceedings become irregular, you are asked for what you did not expect to be asked for, and you are refused a hearing for that which you expected to be heard, and so confusion, expense, and delay are caused. When you are asked for what you are not prepared to expect, an adjournment takes place, or some means are adopted of procrastinating the inquiry until you can procure the information; and if you are refused what you thought would have been heard, some other means are taken to bring the same information before the Committee, which need not otherwise have been resorted to. Therefore, it must be, I think, considered that the character of the tribunal bears very much upon the regularity or irregularity of the counsel, upon the length of the proceedings, and upon the expenses which are entailed upon the parties."

The Reviewer points out that *local* legislation, by means of private Acts, often grows out of the defective state of the general law.

"Parliament prefers the tinkering work of special and exceptive legislation to the enactment of a comprehensive Statute which shall contain provisions suited to all varieties of circumstances. The Local Poor Law Acts had their origin in this cause: they were partial, unconnected, and imperfect attempts to supply the defects of the general law,—useful when they were passed, mischievous now that the general law is amended. The metropolis at

this moment suffers extensively from a similar system of heterogeneous private bill legislation, rendered necessary by the want of adequate general enactments in the Statute-book. The metropolis, according to the boundaries of the Registrar-General, contained in 1851 a population of 2,362,236 an area of 78,029 acres, and 305,933 inhabited houses; of which the proportion falling to the city of London proper is a population of 129,128, an area of 723 acres, and 14,693 inhabited houses. Now, the city of London alone has a municipal corporation; and therefore by far the largest part of the metropolis, comprising 17-18ths of the population and more than 99-100ths of the area is without municipal institutions. Outside the boundaries of the city, therefore, the streets of London are left to the operation of the general law, and the general law makes no difference between streets and other highways. Unless, therefore, a private act was obtained, Piccadilly and the Strand, Oxford Street and Holborn, would be repaired merely as parish highways; the parishioners must appoint a surveyor, and make a highway rate. The general law, moreover, gives no power for lighting; so that without private bill legislation, the whole of the metropolis outside the City would be unlighted. This state of things has called into existence a vast number of special Acts for lighting, paving, cleansing, and other municipal objects in the metropolis: the number of which is calculated by one of the witnesses before the late City Commission at not less than 700. In the parish of St. Pancras alone, there are 17 independent paving boards, created by 30 separate Local Acts; and the powers even of all those boards do not extend over the entire parish. These Metropolitan Private Local Acts form a perfect chaos of legislation; hatched by a thousand parish attorneys, and embodying all sorts of crude ideas and intricate compromises of petty local interests in which the public advantage is often a secondary object."

The Reviewer then observes, that the system of private bill legislation ought to be viewed by the public with jealousy and disfavour, and all attempts to extend its operation ought to be discouraged and repressed.

"Where it is introduced for local purposes, it is often (he says) a partial and imperfect attempt to remedy defects in the general law which might be removed by a properly constructed public measure; such for instance as the General Inclosure Act which has obviated the necessity for Private Enclosure Bills. Where it is introduced for personal objects the procedure is often rather of a judicial than of a legislative character, and involves an amount of vexation, delay, and expense which is detrimental to the community and discreditable to Parliament. Whenever an endeavour is made to perpetuate the reign of private bill legislation and to obstruct

measures intended to substitute general for special procedure, it is fair to presume that the resistance is dictated by motives of personal interest opposed to the public welfare."

#### NEW ORDERS RELATING TO THE MAINTENANCE OF LUNATICS.

It is well known that the Committee of the Estates of Lunatics, under the orders of the Court, render strict and regular accounts of their receipts and payments, of their management of the property, and all the affairs of the unfortunate objects of their trust. But hitherto the supervision of the Court, and the care of its officers, have been limited to the *estate and effects* of the lunatic.

The Committee of *the person* have not been required to make any statement of the expenditure or mode of applying the funds entrusted to them for the maintenance of the lunatic. In the majority of cases, where a near relation has the care of the person, there may be no fear or suspicion of a misapplication of the income; but though this is generally true, instances may occur in which the interests of the Committee may lead to an abridgment of the comforts or luxuries which the income of the lunatic may well afford. If the strong affection of parent and child may be relied on, without hesitation, to provide every proper means for the relief or gratification of the unhappy sufferer, it may not be so where the relationship is distant, or the Committee have a direct interest in diminishing the expense of maintenance, and increasing the residue of the estate.

It may be readily conceived that in the case of persons of wealth who have been accustomed to many luxuries as well as comforts, however lamentable may be their delusions, their state of mind may be excited or alleviated by withholding or continuing the comforts and gratifications to which they have been accustomed.

If the property from which the expenses are to be defrayed, belongs either absolutely to the lunatic or for life, nothing can be clearer, in justice and equity, than that the unfortunate party is entitled to every kind of enjoyment that will contribute to his comfort, or alleviate the distress of his condition, or add in any degree to the innocent amusements in which his impaired faculties may enable him to participate. And this principle should be carried to the most liberal extent. We know not the misery of feeling to which the lunatic is subject; we

know, indeed, that, however others might have borne the calamity, it was too great to be endured by the unfortunate sufferer; and to withhold the smallest means of alleviation is not to be tolerated under any excuse.

It appears that the New Orders of the 12th January, 1855, are well designed to meet these objects. The visitors are to be furnished with a statement of the fortune or income, and the amount of allowance for the maintenance of each lunatic, and they are to inquire and examine into the suitable and proper manner of maintenance, and, having regard to the fortune and income of the lunatic, the visitors are to report whether any addition should be made for his personal comfort or enjoyment, or in the manner in which he is maintained or provided for. The Masters in Lunacy are then to investigate the matter, and, if necessary, to call the committee of the person before them, and report the result to the Lord Chancellor for his lordship's consideration and direction.

#### SAVINGS' BANKS AND FRIENDLY SOCIETIES' INVESTMENTS BILL.

By this Bill, introduced by Mr. Bouverie, the Chancellor of the Exchequer, and Mr. Wilson, it is proposed that:—

1. The Commissioners of her Majesty's Treasury shall direct the Governor and Company of the Banks of England and Ireland to cancel such sums of annuities, as shall together amount to the sums mentioned in Schedule B.

2. In place of the capital stocks of annuities so cancelled, the Commissioners of the Treasury shall direct the Comptroller-General of the Exchequer to record in the Exchequer, in a book to be kept in such form as to the said Commissioners shall seem fitting, an account, to be called "The State Deposit Account, Number One," and there shall be placed at the credit of such account the sum of 24,000,000*l.*, being two third parts or thereabouts of the amount due and payable on the 20th November, 1854, to savings' banks and friendly societies, and the amount of such State Deposit Account, as it shall stand from time to time under the authority of this Act, shall be chargeable upon the Consolidated Fund of the United Kingdom of Great Britain and Ireland; and the amount of such State Deposit Account, and of all the securities held by the Commissioners as specifically set forth in Schedule A. not ordered to be cancelled in Schedule B., and all the cash and other securities whatsoever, which shall at any time be in the possession of the Commissioners for the Reduction of the National Debt, under the authority of this Act, shall be subject and liable

to provide for the discharge of the legal claims of all savings banks and friendly societies.

3. The interest payable to the Commissioners for the Reduction of the National Debt on the State Deposit Account, No. 1, shall be at the rate of 3l. per cent., payable in four quarterly payments, and such interest shall be payable out of the growing produce of the Consolidated Fund; and the first payment shall be made on the 20th May, 1855.

4. The Commissioners for the Reduction of the National Debt, after reserving thereout from time to time such sums as they shall judge necessary to meet the demands on account of savings' banks and friendly societies, shall, under such regulations as the said Commissioners shall direct, invest the interest payable to them on account of the State Deposit Account, and the dividends and interest on all Government securities held by them for savings' banks and friendly societies, and all moneys remitted to them on account of savings' banks and friendly societies, in the purchase of Government securities of whatsoever kind issued, or which may hereafter be issued, under the authority of any Act or Acts of Parliament: Provided always, that the said Commissioners may, if they shall deem it expedient so to do, sell any part of the Government securities held by them under the authority of this Act, and from time to time, as they shall see cause, apply the whole or any part of the moneys arising from such sales either to satisfy the demands of savings banks and friendly societies, or in the purchase of other Government securities as aforesaid: Provided always, that if the said Commissioners shall at any time purchase any Exchequer bills issued under the authority of the Act 57 Geo. 3, c. , or of any Act passed or hereafter to be passed for authorising the issue of moneys out of the Consolidated Fund to meet the grants in supply, it shall not be lawful for the Commissioners of her Majesty's Treasury to authorise the creation of any capital stock of annuities on the cancelling of such Exchequer bills, but such Exchequer bills shall be held by the Commissioners for the Reduction of the National Debt to redemption in the manner directed by the Acts under the authority of which such Exchequer bills shall have been issued: Provided also, that all remittances from savings' banks and friendly societies shall be made under such Regulations as the said Commissioners shall order.

5. Accounts to be made up annually to 20th November.

6. Deficiency to be made good.

7. If it shall appear by the balance sheet that the assets of the Commissioners are more than sufficient to meet the liabilities, an equivalent amount of the State Deposit Account, No. 1, or of such of the securities held by the Commissioners as the Commissioners of her Majesty's Treasury shall deem expedient and proper, shall be cancelled, and the Commissioners of her Majesty's Treasury shall thereupon, issue such orders and directions to the

Comptroller-General of the Exchequer or the Commissioners for the Reduction of the National Debt, as the case may be, as may be necessary for reducing the amount of such State Deposit Account, or for the cancelling of such securities, and such State Deposit Account shall be reduced or such securities cancelled as shall be so directed, and the Commissioners for the Reduction of the National Debt shall thenceforth be relieved from all account in respect of such securities so cancelled: Provided that the State Deposit Amount shall not thereby be reduced to an amount less than two-thirds of the liabilities.

8. The Commissioners of her Majesty's Treasury at any time during any year ending on the 20th November, on application from the Commissioners for the Reduction of the National Debt, under the hand of the Comptroller-General acting under them, stating and certifying what sum of money may be required for satisfying any demands which shall from time to time be made upon the Commissioners for the Reduction of the National Debt, on account of savings' banks or friendly societies, may, in case they shall think fit and proper so to do, by warrant under their hands, order and direct the Comptroller-General of the Exchequer to issue out of the growing produce of the Consolidated Fund, or, if they think fit, to prepare and deliver to the said Commissioners in the manner enacted in section 6, of this Act, such an amount of exchequer bills or exchequer bonds as they shall think proper, not exceeding in the whole such sum or sums of money as shall from time to time be certified in any such application from the said Commissioners, and the amount so ordered to be paid over to the said Commissioners shall be written off from the State Deposit Account for savings' banks and friendly societies.

9. Treasury to regulate mode of keeping accounts in the bank.

10. Bank of England may advance on credit of exchequer bills, &c.

11. Accounts to be laid before Parliament.

#### Schedule A.

Schedule of the several Government Securities and Funds held on 20th November, 1854, by the Commissioners for the Reduction of the National Debt as Securities to meet the Claims of Savings' Banks and Friendly Societies.

| Consolidated 3 per Centum Annuities :— | £                  | s.       | d.       |
|--|--------------------|----------|----------|
| For Savings' Banks . . . . .           | 2,866,884          | 7        | 1        |
| For Friendly Societies . . . . .       | 218,950            | 0        | 0        |
|  | <b>£10,085,334</b> | <b>7</b> | <b>1</b> |
| Reduced 3 per Centum Annuities :—      |                    |          |          |
| For Savings' Banks . . . . .           | 3,249,074          | 6        | 3        |
| For Friendly Societies . . . . .       | 306,600            | 0        | 0        |
|  | <b>£3,555,674</b>  | <b>6</b> | <b>3</b> |

|   | £           | s. | d. |
|---|-------------|----|----|
| New 3 per Centum Annuities:—  |             |    |    |
| For Savings' Banks . . .  | 17,938,710  | 1  | 5  |
| For Friendly Societies . . .  | 1,397,100   | 0  | 0  |
|   | £19,335,810 | 1  | 5  |
| New 2½. 10s. per Centum Annuities:—   |             |    |    |
| For Savings' Banks . . .  | 31,900      | 0  | 0  |
| Exchequer Bonds issued under this Act:—                                       |             |    |    |
| For Savings' Banks . . .  | 1,600,000   | 0  | 0  |
| Exchequer Bills:—   |             |    |    |
| For Savings' Banks . . .  | 58,000      | 0  | 0  |
| Cash at the Account of the Commissioners in the Bank of England and Ireland:— |             |    |    |
| For Savings' Banks . . .  | 156,738     | 17 | 1  |
| For Friendly Societies . . .  | 13,919      | 16 | 2  |
|   | £170,658    | 13 | 3  |

## Schedule B.

Amount of Securities held on 20th November, 1854, by the Commissioners for Reduction of the National Debt to meet the Demands of Savings' Banks and Friendly Societies, to be cancelled under the Directions of this Act.

|   | £          | s. | d. |
|---|------------|----|----|
| Out of the Total Capital Sum of 10,085,834 <i>l.</i> 7 <i>s.</i> 1 <i>d.</i>          |            |    |    |
| Three per Centum Consolidated Annuities, the Capital Sum of . . .                     | 2,845,834  | 7  | 1  |
| The Total Capital Sum of Reduced 3 per Centum Annuities . . .                         | 3,555,674  | 6  | 2  |
| Out of the Total Capital Sum of 19,335,310 <i>l.</i> 1 <i>s.</i> 5 <i>d.</i>          |            |    |    |
| New 3 per Centum Annuities, the Total Capital Sum of . . .                            | 15,355,340 | 1  | 5  |
| Total Capital Amount of 3 per Centum per Annum Annuities to be cancelled, being . . . | 21,736,824 | 14 | 8  |

## ENFORCING ENGLISH JUDGMENTS IN FRANCE.

WE beg to lay before our readers an extract from the judgment of the First Chamber of the Civil Tribunal of the Seine, with which we have been favoured, on this important subject:—

"The Tribunal, having heard the conclusions and pleadings of *Blondel*, counsel, as-

sisted by *Ploëque*, attorney, for *Abrahams*; *Quéland*, counsel, assisted by *Lacroix*, attorney for *Harris*; the conjoint conclusions of *M. Marie*, substitute for the Attorney-General; and after having deliberated conformably to law, judging in first resort:

"Whereas article 546 of the Code of Civil Procedure, which ordains that judgments given by foreign Tribunals shall not be capable of receiving execution in France, but so far as they shall have been declared executory by a French Tribunal, makes no distinction between judgments pronounced between French persons and foreigners, and those pronounced exclusively between foreigners; that there is reason to conclude from these general terms that the French Tribunals take cognizance of all demands having for their object the obtaining the putting in execution in France a judgment emanating from foreign Judges, whatever may be the nationality of the parties concerned.

"Whereas the obligation imposed on the French Tribunals to exercise jurisdiction in such matters can never be considered as an attack upon their rights of examination and control; the thorough revision of the dispute which the Tribunal before which it is brought makes, before authorising or refusing the execution of the judgment deferred to its decision, having precisely the effect of preventing all derogation from the preceding laws.

"Whereas, regarded in this light, a demand of the nature of that which is this day brought before the Tribunal, does not present the features of a cause brought before it by one foreigner against another foreigner, a cause which a French Tribunal is always at liberty to accept or decline the cognizance of, as those of a suit terminated by a definitive judgment pronounced in a foreign country between foreigners, judgment whereof the execution is demanded in France,

"On these grounds,

"The Tribunal declares itself competent, retains the cause, and is adjourned for a fortnight to be fully pleaded.

"Condemns *Harris* to the expenses of the incident payment whereof to *Ploëque*, who has required it.

"Given and judged by Messrs. *Martel*, President, *Berthelin*, *Chauveau Lagarde*, *Coppeaux*, and *Gallois*, Judges.

"In presence of *M. Marie*, substitute.

"11th March, 1854."

## LORD BROUGHAM ON THE LAW REFORMS OF LAST SESSION.

From the last Number of the *Law Review* we extract some passages of a letter addressed by Lord Brougham to the late Lord Denman:—

### 1. As to the unanimity of Jurors.

"One of the most important provisions in the Common Law Procedure Act, that of enabling 10 jurors to give a verdict, if after 12 hours they cannot all agree, was abandoned because a very few members announced their intention of a pertinacious opposition probably extending itself to other clauses. What is the consequence? Not only does the barbarous law of compelling unanimity by carting jurors to the borders of the county, continue in theory at least to disgrace our procedure, but the unanimity of jurors has been actually abolished in Scotland, a Bill having passed to allow the verdict, not of ten but of nine; so that in England all must concur, while in Scotland three-fourths only are required, and this diversity not existing time out of mind, as in the Criminal Law of the two countries, but in the trial of civil causes transplanted from England only 40 years ago."

### 2. Compulsory Arbitration.

"Other provisions have been inserted in the Act, most probably under the same pressure, and which are so extraordinary that one could not have believed them possible without the evidence of the senses. It may suffice to specify two. Either party to an action may apply to a Judge at Chambers to refer the cause, whether his adversary agrees or not, provided it is wholly or in part a matter of account. The meaning possibly may be, that the compulsory reference shall only be of the matter of account, though the literal construction gives the power of referring the whole cause, if any part turns on matter of account. But this I pass over: there is very much worse behind. The Judge may, by the same section (sect. 3), if he thinks fit, himself decide the matter in a summary way. So that one party applying to have a reference (it is probably meant, but not stated), the Judge may summarily decide on the disputed claim of any amount, certainly without the consent of both parties, but by the literal construction of the words, without the consent of either. It is also extremely doubtful if there be any appeal given, and quite certain that if there be, the decision is final in four days. A party in Kerry, certainly in Orkney, suing in Westminster, would thus be unable to appeal, even if appeal is given in any case. The judgment summarily pronounced is enforceable as if there had been a verdict. I must observe, in justice to my Arbitration Bill (from the 31st clause of which this section 3 is taken), that it leaves no doubt whatever as to jurisdiction on the whole cause or only on the matter of account; and it is confined to reference exclu-

sively, giving no power of summary decision to the single Judge. That section was fully considered in the Select Committee in the Lords; and the strange provision on which I am commenting was inserted in the Commons,—the Bill being returned with it to our House, I believe, the very day but one before the prorogation, when we must either agree or lose the whole measure. In the same way the evidence clauses were extended to Ireland, as it were, behind the back of the House of Lords."

### 3. Extension of the Act to Local Courts.

"But there is a yet more extraordinary provision added by the Commons. The Bill had been fully considered by the Commissioners, then by the Select Committee which the Law Lords attended; and we had the great benefit of the Chief Justice's assistance, after he had examined all the provisions with the other Judges. A Bill thus prepared and matured might have been expected to pass through the other House without any material alterations, unless these were well considered and thoroughly discussed. But sect. 105 I cannot bring myself to believe was ever so dealt with. It gives the Crown the absolute power, by Order in Council, to extend all or any part of the Act (new Law of Evidence as well as Procedure<sup>1</sup>) to all or any of the Courts of Record within the realm, and to alter and annul such order from time to time. A month's notice in the *Gazette* is alone required for making this Act of Royal Legislation valid; and no notice is required to either House of Parliament in the accustomed way when powers are entrusted to the whole of the Judges of making regulations of mere detail. Now, only observe in what a state the law is placed by this strange, this transcendental, authority conferred upon the Crown. Take an example of the effects of the provision. There is, by the 103rd section, an extension of the evidence clauses to all the Courts of civil jurisdiction.<sup>2</sup> But, by the 105th, these may be extended to all criminal Courts of Record likewise, if the Crown pleases. Then see what happens. An indictment is pending before the Sessions; it may be that the bill was found at the former Sessions and the trial postponed; the law of evidence is changed in the interval by order in Council, and the petty jury have to hear the case under a different law from that under which the grand jury proceeded. Thus the whole evidence must have been given upon oath before the grand jury, and no witness could be examined who refused to swear but before the petty jury, witnesses might be ex-

<sup>1</sup> "The Act of 1852, which had such a provision, was confined to procedure."

<sup>2</sup> "It is not confined to such Courts deciding on civil matters, which was probably intended; but given to all Civil Courts, which will raise a question as to Courts, for instance, of Quarter Sessions, which have civil as well as criminal jurisdiction."



amined without oath, if by the powers given in section 105—the 20th section has been extended to the Court of Quarter Sessions, and witnesses may thus be called who could not appear before the grand jury. May not the prosecutor say, that had he known this would be the law he would not have preferred his bill? But this is not all. There is a conviction and the sentence is deferred. A new Order in Council may change back the law of evidence, and then the affidavits in mitigation must be upon oath though the trial was upon affirmation. I take this of the dispensing power as my instance; but the whole of the other new rules of evidence in the important sections from 22 to 28 inclusive, may also be applied to any one Court of Criminal Jurisdiction, by the powers given to the Crown in the 20th; or any one or two of these rules may be so applied, and afterwards the application may be annulled. So that on this most essential of all matters connected with the administration of justice, the Crown may make a special law for all Courts of Record, or for any one, and may thus create as great a diversity of laws in different Courts as there was of old in France, where the different parts of the same town lived under wholly different systems of jurisprudence.”

### NEW RULES OF THE COMMON PLEAS.

TRAFFIC ON RAILWAYS AND CANALS, 17 & 18 VICT. C. 31, s. 4.

As to the Forms of Proceedings and Process, made pursuant to the Statute 17 & 18 Vict. c. 31, s. 4, intituled, “An Act for the better Regulation of the Traffic on Railways and Canals.”<sup>1</sup>

1. Every application made under this Act to the Court shall be for a rule calling upon the company or companies complained of, to show cause, why a writ of injunction should not issue against such company or companies, enjoining them to do, or to desist from doing, the thing required to be done, or the thing the doing of which is complained of by the company or person making such application, and every application made under this Act to a Judge at Chambers shall be by summons calling upon the company or companies complained of to show cause in like manner, which summons shall be granted only upon affidavit, and upon a statement made to the Judge in like manner as upon an application to the Court for a rule to show cause.

2. If on the hearing of any such rule or

summons the Court or Judge shall think fit to direct and prosecute inquiries into the matter thereof, under the 3rd section of this Act, the order for that purpose shall be in the following terms, or to the like effect; the rule or summons being enlarged until such further day as the Court or Judge shall think fit, in order that in the meantime such inquiries may be made and reported thereon:—

“In the Common Pleas.”

“In the matter of the complaint of *A. B.* [or of the company] against the company.—It is ordered that *C. D.*, Esq., Engineer [or as the case may be] do forthwith make such inquiries into the matter of this complaint as may be necessary to enable the Court [or the Honourable Mr. Justice] to determine the same, and do report thereon to the Court [or to the said Mr. Justice] on or before the day of next.

“Dated this day of 185.”

3. Office copies of all the affidavits filed by either party on the hearing of such rule or summons shall, at the expense of such party, be furnished to the person appointed to make such inquiries, within three days after the making of such order as aforesaid.

4. The parties shall be entitled to be again heard by the Court or Judge, upon the said report; but no fresh affidavits shall be allowed on such hearing, unless by leave of the Court or a Judge.

5. Every writ of injunction issued under this Act shall be in the following form or to the like effect:—

“Victoria, &c. To the company, their agents and servants, and every of them greeting. Whereas *A. B.* [or ‘the company’] hath lately complained before us in our Court of Common Pleas at Westminster, of a violation and contravention by you the said company, of, ‘The Railway and Canal Traffic Act, 1864;’ that is to say in [state the Act or omission complained of]. And whereas upon the hearing of such complaint the same hath been found to be true; we do, therefore, strictly enjoin and command you the said company, and your agents and servants, and every one of you, that you and every one of you, do from henceforth altogether absolutely desist from [state the matter for the injunction where an act done is complained of], or ‘that you and every one of you forthwith do’ (state the matter for the injunc-

<sup>1</sup> See p. 213, ante, where the Act is printed.

tion where an omission is complained of), until our said Court shall make order to the contrary. Witness, Sir John Jervis Knight, at Westminster, the day of in the year of our Lord .”

6. If the Court or Judge shall think fit also to make an order, directing the payment of a sum of money by the company or companies complained of, such order shall be in the following form, or to the like effect.

“In the Common Pleas.

“In the matter of the complaint of against the company. It is ordered that the said company do pay to the said [or “into Court, to abide the ultimate decision of the Court, in the matter of the said complaint,” or “to the use of her Majesty”] the sum of l. for every day after the day of inst., that the said company shall fail to obey a certain writ of injunction dated this day, and issued against the said company at the instance of the said

“Dated this day of 185 .”

7. If such money be ordered to be paid into Court, to abide the ultimate decision of the Court, the same shall, upon the ultimate decision of the Court being made, be paid out of Court either to the party complaining, or to the use of her Majesty, or to the company by which the same was paid into Court, as the Court or Judge shall direct.

JOHN JERVIS.  
W. H. MAULE.  
C. CRESSWELL.  
E. V. WILLIAMS.  
R. B. CROWDER.

January 31, 1866.

## LAW OF ATTORNEYS AND SOLICITORS.

### LIEU ON POLICY IN RESPECT OF COSTS, WHERE NOT INCLUDED IN MORTGAGE.

It appeared that Mr. George Annesley, who had been the solicitor for Lady Dunboyne, took a deposit of a policy of assurance from her to secure the payment of his costs, but without any memorandum to that effect. A mortgage was afterwards executed, assigning the policy as a security for sums already advanced and thereafter to be advanced, but no mention was therein made of the costs, and he retained the policy until Lady Dunboyne's death.

On a petition praying that the produce of the policy might be applied in payment of

such costs, the Vice-Chancellor Kindersley said:—“It may have been intended that the policy was to remain a security for that which, at the time of the execution of the mortgage, was not mentioned in it, namely, the costs; but it is not so stated in the deed; and in the absence of any such expressed intention, I must apply the general principle. In this case, I am of opinion that the policy is in the hands of the petitioner, not by virtue of the deposit, but of the mortgage; and when the mortgage is satisfied, he has no further right to hold it. The possession by the original depositor is merged in that acquired under the mortgage; and Annesley can only have out of the produce of the policy what was secured by the mortgage. The petition must be dismissed; but, considering the conduct of the petitioner, who has done everything in his power to facilitate the trial of the question at the smallest expense to the estate, he may be allowed his costs of this proceeding out of the policy money.” *Vaughan v. Vanderstegen; In re Annesley*, 2 Eq. Rep. 1,257.

### RETAINER OF ATTORNEY BY LUNATIC TO APPLY FOR HABEAS CORPUS.

It appeared that upon the issue of a commission *de lunatico inquirendo* against a Captain Child, he had appointed an attorney to defend him, who had, however, been refused permission to see his client, whereupon he obtained a rule *nisi* for a *habeas corpus*. The Court of Common Pleas in discharging the rule with costs, said, that it did not at all follow that because the applicant had authority from the alleged lunatic to prosecute a petition of lunacy, he had authority to apply for a *habeas corpus*. The Commissioners of Lunacy, or the Lord Chancellor might grant access, if applied to; but it did not appear that the present confinement of the alleged lunatic was at all against his will. *In re Fitzgerald, ex parte Child*, 2 Com. L. Rep. 1801.

## LAW OF COSTS.

### PAYMENT OF, IN CHARITY CASES.

In raising costs out of charity property by mortgage, the Court is anxious to provide for its extinction by a sinking fund. *Attorney-General v. Archbishop of York*, 17 Beav. 496.

### OF PETITION UNDER TRUSTEES' ACT, 1850, ON SALE OF COPYHOLDS.

After a decree for the sale of an intestate's

copyhold estate, in lots, the infant heir of the intestate was admitted. The purchaser of lot 9 having paid his purchase-money into Court, presented a petition for a vesting order under the 13 & 14 Vict. c. 60. The *Master of the Rolls* said, that "the vendor must pay the costs, except those of the Lord of the Manor, whose consent in Court was not required. The costs must be paid out of the purchase-money of this particular lot, and not out of the fund in Court generally." *Ayles v. Cox; ex parte Attwood*, 17 Beav. 584.

#### OF SUIT TO PREVENT EQUITABLE WASTE.

A bill, filed against trustees and the tenant to prevent equitable waste, was dismissed with costs, as against the tenant, where it was not shown that he had committed or intended to commit any waste, although some had been committed by the trustees at his request. *Campbell v. Allgood*, 17 Beav. 623.

### POINTS IN EQUITY PRACTICE.

#### MOTION ON BILL BEING DISMISSED FOR WANT OF PROSECUTION.

In a suit, the bill was filed August 25, 1845, and on July 14, 1853, an order was made, on a motion to dismiss for want of prosecution, that the plaintiffs should within one week set down the cause for hearing and serve a subpoena to hear judgment, or in default that the bill should stand dismissed with costs. On July 19, the plaintiffs set down the cause and issued a subpoena returnable on November 2, but did not serve it till September 9. The defendants' solicitor, on September 10, informed the plaintiffs' solicitor he intended to treat the suit as dismissed, and on October 29 took out warrants to tax. On a motion on November 4, to stay the taxation, except as to costs of the motion of July 14, the *Master of the Rolls* said:—"When this case was opened, I was struck with the singularity of the form of the motion, which asks, that the defendant may be absolutely restrained from taxing the costs of the suit, under the order of July last, instead of only seeking to stay the taxation until he could move the Court to restore the suit, which is gone by that order. But although the plaintiffs knew, as early as the 10th of September, that the defendants insisted on treating the suit as dismissed, they took no steps to restore it till November. If they had now come here upon a motion with that ob-

ject, and had made out a case for indulgence, on the ground of a *bond fide* mistake, I should have been unwilling to destroy the suit by standing on the strict practice; but at the same time, indulgence is not to be extended to such an extent, as to form a precedent which would encourage parties to proceed with a suit as negligently as they might think fit.

"The plaintiffs say, that no inconvenience has resulted, or can result, from their slip, but it is a great and serious inconvenience to a defendant to have a suit hanging over his head for a great length of time, in consequence of the delay of the plaintiff in its prosecution. If the motion had been properly framed, I might have been inclined to restrain the taxation of the costs of the suit until the next seal, to enable the plaintiffs to take such course as they might be advised. But the plaintiffs make no case for indulgence, although they must have expected that the defendants would oppose any application to take from them the benefit of the order. They make no case which, on a proper motion for that object, would have induced me to order the suit to be restored, and I must therefore dismiss the motion, with costs; indeed, the plaintiffs must have paid all the costs, if the motion had been granted." *Bartlett v. Harton*, 17 Beav. 479.

### ANCIENT RULES AND ORDERS RELATING TO ATTORNEYS.

#### REQUIRING THEM TO BE MEMBERS OF THE INNS OF COURT OR CHANCERY.

By a Rule of Hilary Term, 1632, the following regulation was made by the Court of King's Bench, regarding the service of a clerkship to an attorney before admission, and providing that every attorney should become a member of an Inn of Court or Chancery:—

"None hereafter shall be admitted to be an attorney of this Court unless he have served a clerk or attorney of this Court by the space of six years at the least, or such as for their education and study in the law shall be approved of by the Justices of this Court to be of good sufficiency, and every of them admitted of one of the Inns of Court or Chancery."

In Michaelmas Term, 1654, a Rule of Court was made to compel attorneys to become members of an Inn of Court or Chancery:—

"That all officers and attorneys of the Court be admitted of some Inn of Court or Chancery, by the beginning of Hilary Term next, or in the same Term wherein they are admitted officers or attorneys; and be in commons one week in every Term, and take chambers there,—or in case that cannot be

done conveniently, yet to take chambers or dwellings in some convenient place, and leave notice with the butler where their chambers or habitations are, under pain of being put out of the Roll of Attorneys."

In Trinity Term, 1677, and Michaelmas Term, 1684, the Court of Common Pleas ordered the attorneys of that Court to be admitted of some Inns of Court or Chancery; and in Michaelmas Term, 1704, the following rule on that subject was made by the Courts of King's Bench, Common Pleas, and Exchequer:—

"It is ordered, that all attorneys and clerks of the said Courts, not already admitted into one of the Inns of Court or Chancery, shall procure themselves to be admitted into one of the said Inns of Court (if those honourable societies shall please to admit them), or into one of the Inns of Chancery, before the end of Trinity Term now next ensuing."

Notwithstanding these Rules and Orders of the Superior Courts of Common Law, the Benchers of all the Inns of Court have made regulations excluding attorneys and articulated clerks from being admitted as members of those societies. At first the restriction applied only to calling attorneys to the Bar after a limited period; but subsequently they were excluded altogether from any membership, and consequently cannot resort to the library or attend the lectures.

In the *Inner Temple*, in 1762, it was ordered:—

"That no attorney or solicitor, or clerk in the Chancery or Exchequer, be called to the Bar till they shall have actually discontinued the practice of their former profession two years."

And in 1789, it was further ordered:—

"That from and after the end of this present Trinity Term, 1789, no articulated clerk, either to an attorney or solicitor, or to a clerk in the Court of Chancery or Court of Exchequer, ought to be called to the Bar until his articles shall either have expired or been cancelled for the space of two whole years. It is now ordered by the Masters of the Bench now present, that the said resolution be confirmed and adopted as the rule of this society in all future applications of such articulated clerks to be called to the Bar."

Again, in 1828, it was resolved:—

"That no *recipiatur* for entering into commons be granted to any person whose name stands on the Roll of Attorneys or Solicitors, or who is articulated to any attorney or solicitor."

In the *Middle Temple*, in 1762, it was ordered:—

"That no attorney, solicitor, clerk in Chancery or of the Exchequer, shall be called to the Bar until the end of two years, at least, after they shall have discontinued practising as such."

And in 1825, it was further resolved:—

"That no *recipiatur* for entering into commons shall hereafter be granted to any person, whether owner of chambers or not, whose name stands on the Rolls of Attorneys or Solicitors, or who shall be engaged in any profession other than the Law, or in any trade, business, or occupation."

In *Lincoln's Inn*, in 1808—

"It was resolved not to hear the exercises of any gentleman who has been an attorney or solicitor, until his name shall have been taken off the Roll, nor of any gentleman who acts as clerk to any attorney or solicitor; nor shall any attorney or solicitor be called to the Bar till his name shall have been taken off the Roll for two years; nor any clerk to any attorney or solicitor, till he shall have ceased for two years to act as such clerk."

And in 1828, it was further ordered:—

"That no person be admitted of this society whose name stands on the Roll of Attorneys or Solicitors, or who is articulated to an attorney or solicitor."

In *Gray's Inn*, it was resolved:—

"That no person be called to the Bar in case he shall be in deacon's orders, or under 21 years of age; also if he is an attorney or solicitor, or clerk in the Chancery or Exchequer, he must have discontinued the practice of his profession for two years."

[Extracted from the 6th Report of the Common Law Commissioners.]

## INCONVENIENCE OF THE COURTS AT WESTMINSTER.

IN the Exchequer of Pleas, at the Sittings at Middlesex, at Nisi Prius, before Mr. *Baron Platt* and Common Juries, on the 22nd inst., a case was suddenly brought to a standstill by the absence of a witness. It was suggested that the witness not being accustomed to attend the Courts at Westminster, might be in the full Court. Mr. *Bramwell* said, it was so difficult to obtain an entrance into that Court,—the Exchequer Chamber where the Court sits at Nisi Prius during Term,—that it was not impossible but that not being able to hear what was going on in that confined room, the witness, even supposing that he had been able to find his way to the door, had walked away, not knowing that the cause in which he had been subpoenaed as a witness was actually proceeding in that Court. Mr. *Watson* was unable in any way to deny the vast difficulties of obtaining an entrance into the Court, nor the almost overwhelming inconvenience which was the lot of all persons having business there when they had succeeded in forcing an entrance into it. Mr. *Baron Platt* said,—“I can hear your voice, Mr. *Watson*, but there are so many persons between us that I cannot see you.”

So limited is this part of the Court that four persons standing in the gangway totally ex-

clude the two first counsel at this end of the barrister's bench from being within the view of the presiding Judge. The intruders were, upon this complaint of the learned Baron, with much difficulty made to withdraw.

Mr. *Watson* repeated his remarks as to the unfitness of the Court for the purpose to which it was applied. Various messengers having been sent in search of the absent witness, returned with negative answers as to the success of their errand.

A jurymen, from the "box in waiting," in the course of the day, inquired of the learned Baron whether that box was not intended for the accommodation of the jurors who were in waiting.

Mr. *Baron Platt* said,—"Undoubtedly, the jurors in waiting had the first right to such accommodation as that confined box afforded. Why was the question asked?" The *Jurymen*.—"Because there were many persons who were not jurors sitting there, while he and others who were compelled to be in attendance as jurors in waiting were obliged to stand."

Mr. *Baron Platt* "was extremely sorry for the inconvenience which jurors who came there to perform a public duty were made to submit to. The Court was an utter disgrace to the country. It was disgraceful that there should not be any accommodation for gentlemen who were summoned there to carry out the law of the land in the character of jurymen. But not only was there no accommodation for those gentlemen, but there was no provision made for witnesses and others whose duty called them there. Then there was no room for the public, who had a right, if they chose, to attend the Courts of Law in order to see how the law of the country was administered. The arrangement of accommodation in that Court was a disgrace to the country."—From *The Times* of the 23rd January.

For the private convenience of the learned Judges of the Court of Exchequer, when the Exchequer Chamber was reconstructed some years since, there was a narrow passage made between the wall of the Court and the back of the bench, which, under the new arrangement, was appropriated to the members of the bar. This passage, from that period up to the present day, has been the only road by which the two junior Barons have during the hours of the sitting in the "full Court," been able to retire into the Judges' room. Such is the limited size and peculiar formation of the Court, however, that if above 20 or 30 of the public are in it, the only place of refuge for them, if they desire to hear the trials, is this passage of about two feet in width. If, too, there happens to be a larger number of the gentlemen of the long robe present than a simple dozen, and those barristers must not be of more than the middle scale of dimensions, the only place where they can take up their standing is in the "Judge's passage." On the

23rd inst., as Mr. *Baron Platt* was engaged in trying causes, and could not quit the Court without great inconvenience to many persons, it was necessary that another learned Baron should go to "Chambers," Mr. *Baron Alderson* accordingly was about to set out on this expedition. The first obstacle the learned Judge met with was extreme difficulty in opening the door which separates the two courts, in consequence of three or four persons having taken up their station in the doorway, which, being elevated by two steps above the flooring, afforded them the better opportunity of looking over the partition, and obtaining a glimpse of the presiding Judge, the jury, and the witnesses under examination. By dint of much pressing and squeezing up into the corners of the doorway these persons made sufficient room for his lordship to pass. But his lordship had not been released from this difficulty an instant before he discovered that the passage itself was completely blocked up by counsel, solicitors, and their clerks, and several of the general public, whereupon he called out to the ushers, and having ordered them at once to clear the way, complained in a loud voice that any one should be permitted to stand there, for it was impossible that the Judges could force their way through such a crowd; nor should they have any impediment thrown in their way, or be inconvenienced as they were, in the act of proceeding to perform a portion of the public duty. The ushers with much difficulty cleared the passage, and the learned Baron wended his way to "Chambers" in Serjeant's Inn.—From the *Times* of 24th January.

Again, at the sittings at *nisi prius* in Middlesex, on the 25th January, it appears from the report in the *Times*, that "the limited space in the Court was crammed with auditors. The consequence was that the Court became insufferably close, so much so as at times to produce an occasional sensation of approaching suffocation. At length Mr. *Baron Platt* ordered one of the ushers of the Court to open a window. This order was no sooner carried into execution than down poured a stream of cold air. About a quarter of an hour afterwards, Mr. *Quain*, one of the counsel engaged in the cause that was being tried, requested the usher to close the window, when he was informed that the admission of fresh air had been ordered by the learned Judge. Of course the learned counsel, in this state of things, felt himself bound to submit to the sacrifice of his own personal comfort to the convenience of the learned Baron, and the window remained open. Much further time, however, was not permitted to elapse for the continuance of the evil, for a complaint was made by the jury that they were suffering much inconvenience from the draught of wind that reached them from the window in question.

"Mr. *Baron Platt*—Gentlemen, this is a horrible Court, I ordered the window to be

opened in order that we might all be relieved, as far as possible, from the dreadfully oppressive sensation which was produced by its closeness; but as it is inconvenient to you it shall be again closed. The window was therefore shut, and the exertion of struggling against annoying stench and threatened suffocation once more commenced."

[We deem it necessary to record all these instances of the inconvenience of the Courts at Westminster,—trusting that at length the Government will remedy the evil by the construction of new Courts on the proposed site between the Temple and Lincoln's Inn.—*Ed. L. O.*]

## TAXES ON THE ADMINISTRATION OF JUSTICE.

### COUNTY COURTS.

LORD BROUGHAM in his letter last summer to Lord Denman, thus writes on the subject of the taxes on suitors to defray the administration of justice:—

"I know not, if under the head of administrative defects and abuses should be classed the grievances most complained of by the Judges and the suitors of the County Courts,—I mean the load of taxes laid upon them—270,000*l.* a year wrung from these suitors, when all that is paid in the Superior Courts amounts to less than the fifth part, 50,000*l.* That the jurisdiction of those Courts must be extended, no one can now affect to doubt. The pecuniary interest of practitioners in the Courts above can alone resist this extension. It is monstrous to think that no one can recover a legacy, or other sum due on an equitable ground if the amount is small; that there is still the same absolute denial of justice in thousands of cases which there was in hundreds of thousands before these Courts were established. But this requires a legislative proceeding; the relief from taxes may be given in an hour by the Treasury and the Secretary of State acting together. And here let me express—or rather endeavour to express—my astonishment at hearing our most able and learned friend, the Chief Justice, profess himself favourable to taxes on law proceedings, provided the produce is used only in defraying the expenses of the Court. How so acute a person could for a moment be deceived by the fallacy that it is no tax if applied to support the judicature, is to me altogether incomprehensible. If it is the bounden duty of the State to provide for the administration of justice, as much as for the public defence, the provision must be made at the expense of the whole community and not of the class the least able to bear the burden, for the very reason that they have the greatest occasion for the help provided. The self-same argument, if argument it can be called, would justify us in throwing the whole expense of defending the frontiers upon those most exposed to inva-

sion; the whole expense of police upon those plundered or threatened; nay, in making the poorer classes pay for the hospitals and work-houses, which they, and not the rich, use; for the nation must be just before it is generous, and the suitor has a perfect right to relief in the Courts, whereas the poor have only a claim on our charity for relief in the hospital."

[It should be observed, however, that if Parliament had been informed when these Small Debt Courts were proposed, that they were to cost the country 270,000*l.* a year, no such Courts would have been established. The 5*l.* or 10*l.* Courts of Request would have been continued, and if rendered uniform, might have answered the purpose.]

## CHANCERY QUEEN'S COUNSEL.

### COURTS IN WHICH THEY PRACTISE.

THE following arrangement has been made as to the Courts in which the Queen's Counsel will practise:—

#### *Master of the Rolls.*

R. P. Roupell, Esq.  
E. J. Lloyd, Esq.  
Roundell Palmer, Esq.  
B. S. Follett, Esq.

#### *Vice-Chancellor Kindersley.*

C. T. Swanston, Esq.  
C. P. Cooper, Esq.  
J. G. Teed, Esq.  
James Campbell, Esq.  
John Bailly, Esq.  
W. B. Glaess, Esq.  
James Anderson, Esq.

#### *Vice-Chancellor Stuart.*

J. Walker, Esq.  
L. J. Wigram, Esq.  
James Bacon, Esq.  
R. Malins, Esq.  
W. Blmaley, Esq.  
R. D. Craig, Esq.

#### *Vice-Chancellor Wood.*

John Holt, Esq.  
Thomas Chandlee, Esq.  
John W. Willcock, Esq.  
W. T. S. Daniel, Esq.  
W. M. James, Esq.

*Hilary Term, 1855.*

## NEW COMMON LAW ORDER AS TO FORM OF AFFIDAVIT.

WE would draw the attention of our readers to Order 2 of November 27 last, which comes into operation the first day of next Term, and provides that "every affidavit to be hereafter used in any cause or

civil proceeding in any of the said Superior Courts of Common Law, shall be drawn up in the first person, and shall be divided into paragraphs; and every paragraph shall be numbered consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject." The order directs that no costs shall be allowed for any affidavit, or part of an affidavit, substantially departing from this rule.

### PROPOSED RE-ADMISSION OF MR. WILLIAM HENRY BARBER.

*Westminster Hall,  
Wednesday, Jan. 31, 1855.*

In the Queen's Bench.

IN RE BARBER.

(Before Lord Campbell, Mr. Justice Coleridge and Mr. Justice Crompton.)

Sir F. Kelly.—"My Lord, I am instructed to move for the re-admission of Mr. William Henry Barber an attorney, — a gentleman whose case has been more than once before the Court; and, after the intimation formerly given by the Court, I need not say that the motion is to be made on new matter, and new matter so important that I cannot but entertain a confident hope that this motion will be successful."

Lord Campbell.—"Is it convenient to make a motion of that sort the last day of Term?"

Sir F. Kelly.—"Feeling that, I was about to ask your lordships to be good enough to name any time after the Term when my learned friend, Sir F. Thesiger, who, I presume, is instructed to appear, will be able to attend."

Lord Campbell.—"There must be a rule to show cause. It must be regularly moved."

Sir F. Kelly.—"No doubt."

Sir F. Thesiger.—"I may recall to your lordship's recollection that, on a former occasion, when an application was made for the re-admission of Mr. Barber after a prior application had been disposed of, your lordships heard the application and took the affidavits, containing what was said to be additional evidence, into consideration, and you refused the rule: probably the same course would be the proper one to be adopted on the present occasion."

Sir F. Kelly.—"My Lords, I am entirely in your hands."

Lord Campbell.—"The better course, surely, would be, that you should make your motion on the first day or early in the next Term."

Sir F. Kelly.—"I would say the second day of Term, the first day in Easter Term is a broken day. If your lordships would permit it, I would say the second day of Easter Term, I dare say the matter can then be very conveniently disposed of."

Lord Campbell.—"I think it must be weighty new matter, because the case has been most attentively considered before I had the honour of being a member of this Court, and since I have had the honour of being a member of this Court there has been a solemn adjudication, and if new matter does arise, it can never be too late for us to give due weight to it."

Sir F. Kelly.—"I am quite aware of all that fell from your lordships and the other members of the Court on all former occasions, and I do assure you I never would—speaking for myself personally—have appeared before the Court in this matter, unless I had felt that there was new matter."

Lord Campbell.—"Then, on the second day of next Term you will move for a rule nisi."

Sir F. Kelly.—"Would your lordships permit me to say, I find, on looking into the papers, it is necessary to file an additional affidavit. Would you allow me to do that?—I would say, a month before the application."

Lord Campbell.—"You may do that at any time before you make the motion."

Sir F. Kelly.—"We will take care to do that, and furnish copies to the other side, and also to your lordships."

[From the Shorthand-writer's Notes.]

### SELECTIONS FROM CORRESPONDENCE.

#### COSTS OF MORTGAGEE.

THERE seems to be an error in naming the mortgagor and mortgagee in the query of "Amicus." I presume A. B. offers the principal and interest to C. D., who refers him to his solicitor—not C. D. to A. B. Is it not likely that the 4*l.* demanded by the solicitor was owing by the mortgagee? If so, I conceive the solicitor would have a lien upon the title-deeds until paid. (See *Ogle v. Story*, 1 N. & M. 474.) If this is not the case, surely the mortgagee's solicitor could not justify such a demand as that named. P. S.

#### DULWICH COLLEGE.—BUILDING GROUND.

It is alleged that competent and experienced architects and surveyors are of opinion that

the estates of Dulwich College in the immediate vicinity of the College are capable, by building on, of producing no less than 30,000*l.* a year in ground-rents, were proper steps taken. In this opinion I am disposed fully to coincide. It is not, however, believed that the authorities are by any means disposed to adopt such a course, and whether it is open for any other person to do so, is a matter which requires much consideration.

I shall be glad of the sentiments of your correspondents on the subject. Possibly the charitable Commissioners might take the initiative, or advise on the proper steps to be taken.

DELTA.

## NOTES OF THE WEEK.

## LAW APPOINTMENTS.

The Right Honourable Sir S. Lushington, Judge of the High Court of Admiralty, has appointed Mr. *Thomas Henry Field*, of Gosport, to be a Commissioner to administer oaths in the High Court of Admiralty.

Mr. *W. P. Leatham*, of the North-West Bar of Ireland, has been appointed Recorder of Londonderry, in the room of Mr. Boyd, deceased.

Mr. *Ewis Evershed* has been appointed Clerk of the Peace for Brighton.

Mr. *B. Lewis*, Senior Clerk, has been appointed Chief Clerk in the Accountant-General's Office of the Court of Chancery, in the room of Mr. S. Parkinson, resigned. Two

additional Junior Clerks have been appointed in consequence of the great increase of business in the Accountant-General's department.

PROCEEDINGS IN PARLIAMENT  
RELATING TO THE LAW.

## House of Lords.

BILLS of Exchange—Lord Brougham. In Committee, Feb. 2.

Speedy Trial of Offenders—Lord Brougham. For 2nd reading.

Cathedral Appointments. For 2nd reading.

## House of Commons.

Public Health—Sir B. Hall. For 2nd reading, Feb. 12.

Common Law Procedure (Ireland). In Committee.

Episcopal and Capitular Estates. For 2nd reading, Feb. 21.

To Amend the Law of Partnership—Mr. Cardwell, Feb. 5.

Bills of Exchange and Promissory Notes—Mr. Keating.

Judgments' Execution. For 2nd reading. Feb. 1.

Law of Mortmain Amendment—Mr. Atherton. Feb. 13.

Passengers by Sea Regulation—Mr. Peel. For 2nd reading.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Master of the Rolls.

*Acaster v. Anderson*. Jan. 12, 1855.

EQUITY JURISDICTION IMPROVEMENT ACT.  
—ADMINISTRATION SUMMONS AT CHAMBERS UNDER S. 45.

Held, that the proceeding to obtain an administration at Chambers under the 15 & 16 Vict. c. 86, s. 45, is only applicable in simple cases, and where any dispute arises the proceedings must be adjourned in order to file a claim or bill.

It appeared that the residuary legatee, under the will of a testator, had taken out an administration summons under the 15 & 16 Vict. c. 86, s. 45,<sup>1</sup> against the executor, alleging a balance, was due, although he had executed

a release, and the usual order for an administration had been thereupon made by the chief clerk, notwithstanding the executor alleged the plaintiff had been paid.

*Palmer and C. Chapman Barber* now appeared for the executor in support of a motion to discharge such order; *Batten* contra.

The Master of the Rolls said, that the proceeding to obtain an administration by sum-

<sup>1</sup> Which enacts, that "it shall be lawful for any person claiming to be a creditor or a specific pecuniary or residuary legatee, or the next of kin, or some or one of the next of kin of a deceased person to apply for and obtain as of course, without bill or claim filed, or any other preliminary proceedings, a summons from the Master of the Rolls, or any of the Vice-Chancellors requiring the executor or administrator, as the case may be, of such deceased person, to attend before him at Chambers, for the purpose of showing cause

why an order for the administration of the personal estate of the deceased should not be granted; and upon proof by affidavit of the due service of such summons, or on the appearance in person, or by his solicitor, or counsel of such executor or administrator, and upon proof by affidavit of such other matters, if any, as such Judge shall require, it shall be lawful for such Judge, if in his discretion he shall think fit so to do, to make the usual order for the administration of the estate of the deceased, with such variations, if any, as the circumstances of the case may require; and the order so made shall have the force and effect of a decree to the like effect made on the hearing of a cause or claim between the same parties; provided that such Judge shall have full discretionary power to grant or refuse such order, or to give any special directions touching the carriage or execution of such order."



mons at Chambers was only applicable in simple cases, and the proceedings should have been adjourned in order to file a claim or bill. The motion would, therefore, be granted as asked.

*Truck v. Lamprell.* Jan. 24, 1855.

**MOTION FOR DECREE.—READING ANSWER OF DEFENDANT AGAINST CO-DEFENDANT.**

Held, that on a motion for a decree under the 15 & 16 Vict. c. 86, s. 15, the plaintiff is not entitled to read the answer of a defendant who does not appear at the hearing against his co-defendant.

THIS was a motion for a decree under the 15 & 16 Vict. c. 86, s. 15, of this suit which was instituted against trustees for an account.

Palmer and C. T. Simpson, for the plaintiff, sought to read the answer of a defendant who did not appear at the hearing as an affidavit.

The Master of the Rolls, however, held that it could not be so read.

Lloyd and H. Stevens for the other defendant.

**Vice-Chancellor Mannersley.**

*Steele v. Gardon.* Jan. 18, 1855.

**ABSCONDING DEFENDANT.—ENTERING APPEARANCE UNDER ORDERS OF MAY, 1845.—SUBSTITUTING SERVICE.**

The Court gave leave to enter an appearance for an absconding defendant who was out of the jurisdiction under the 29th Order of May 8, 1845, where the solicitor upon whom service of copy bill had been substituted had taken no step; but refused to direct service of the subsequent proceedings to be substituted.

THIS was a motion under the 29th Order of May 8, 1845, for leave to enter an appearance in this case for an absconding defendant who was out of the jurisdiction. It appeared that an order had been made substituting service of the copy bill on his solicitor, but that no proceedings had been taken by him.

Nalder in support, also asked to substitute on the solicitor the subsequent proceedings.

The Vice-Chancellor said, that the motion would be granted as asked, so far as related to entering the appearance, but would be refused as to directing substituted service of the future proceedings.

**Vice-Chancellor Stuart.**

*Cropper v. Mellersh.* Jan. 25, 1855.

**FORECLOSURE SUIT AGAINST DEVISEE IN TRUST.—PARTIES BENEFICIALLY INTERESTED.—EQUITY JURISDICTION IMPROVEMENT ACT.**

In a suit to foreclose a mortgage against the devisee in trust under the will of the party entitled to the equity of redemption: Held, that the persons beneficially interested are necessary parties, notwithstanding the 15 & 16 Vict. c. 86, s. 42, rule 9.

In this suit, to foreclose a mortgage, an objection was taken by the devisee in trust under the will of the party entitled to the equity of redemption, on the ground that the persons beneficially interested in the equity of redemption were necessary parties.

Wigram and Piggott in support; Craig and Druce for the plaintiff contra, citing *Sale v. Kitson*, 3 De G. M. & G. 119; *Hansen v. Riley*, 9 Hare, xl.

H. Stevens for the trustee of the mortgage.

The Vice-Chancellor said, that there might be cases in which it might be safe to proceed in bills of foreclosure without the parties beneficially interested in the equity of redemption being before the Court, but these were extraordinary cases. The Legislature intended by the 15 & 16 Vict. c. 86, s. 42, rule 9, to leave it in the discretion of the Court as to whether such parties should be before it. The objection must therefore be allowed, with leave to amend.

**Vice-Chancellor Wigram.**

*Savage v. Hutchinson.* Jan. 16, 1855.

**ADMINISTRATION CLAIM.—PAYMENT OF COSTS BY EXECUTORS.—WHETHER COMMON OR SPECIAL.**

Held, that a claim by a legatee to administer his testator's estate, and obtain payment of his legacy against the executors, and seeking the payment of costs by them, is a common and not a special claim.

THIS was an application for a direction to the Clerk of Records and Writs, to file a special claim (leave having been obtained), which was brought by a legatee against the executors, to administer his testator's estate and obtain payment of his legacy. It appeared that the Clerk of Records and Writs refused to file it, unless as a common claim.

Rogers in support, on the ground that it was sought to render the executors personally liable for the costs, and that according to the form given, they would come out of the estate.

The Vice-Chancellor, however, held, that the Clerk of Records and Writs was right, and that the costs might be obtained from the executors according to the form given in the orders, and directed it accordingly to be filed as a common claim.

Which enacts, that "in all suits concerning real or personal estate which is vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested under the trusts parties to the suit; but the Court may, upon consideration of the matter, on the hearing, if it shall so think fit, order such persons, or any of them, to be made parties."

*Johnson v. Clark.* Jan. 20, 1855.

**DEGREE FOR FORECLOSURE AGAINST DIS-  
CLAIMING DEFENDANTS.**

*In a foreclosure suit, all the defendants dis-  
claimed: A decree was made on motion  
for a foreclosure, in lieu of dismissing the  
bill.*

It appeared in this foreclosure suit by the mortgagee of certain property, that all the defendants by their answers disclaimed; and this application was therefore now made for a decree to foreclose, instead of to dismiss the bill.

Prendergast, in support, cited *Perkin v. Stafford*, 10 Sim. 562 (and see also *Collins v. Shirley*, 1 Russ. & M. 638; *Ablett v. Edwards*, 10 Sim. 562, n.).

The Vice-Chancellor made the decree as asked.

**Court of Queen's Bench.**

*Regina v. Sheriff of Warwickshire and others.*  
Jan. 13, 1855.

**LOCAL IMPROVEMENT ACT.—ASSESSMENT  
OF DAMAGES.—INTEREST OF SHERIFF.  
—LANDS' CLAUSES' ACT.—CERTIORARI.**

*Held, that the warrant to assess compensation under a local improvement act, with which the provisions of the 8 & 9 Vict. c. 18, were incorporated, to parties whose interests may be affected by the order of the town council to set back buildings projecting beyond the line of other buildings, should be directed to the coroner under s. 39 of the Lands' Clauses' Act, where the sheriff is a ratepayer, and as such interested in the inquisition; and where such inquisition was taken by the undersheriff, a rule was made absolute for a certiorari to bring it up in order to be quashed.*

Mellor and Field showed cause against this rule nisi, which had been granted for a certiorari to bring up the inquisition taken before the undersheriff of Warwickshire, upon the claim of a Mr. Laet, whose building had been ordered by the town council of Birmingham to be set back, as it projected beyond the line of other buildings, under their local improvement act, with which the provisions of the Lands' Clauses' Consolidation Act (8 & 9 Vict. c. 18) were incorporated. The inquisition was directed to the sheriff of the county and was taken before the undersheriff, and a sum of £271. was awarded. It appeared that the sheriff was a ratepayer, and as such interested in the result of the inquisition.

By the 39th section of the 8 & 9 Vict. c. 18, it is enacted, that "if such sheriff be interested in the matter in dispute, such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate."

The Court (without calling on Bovill in support) said, that although the local act did away with the disqualification of justices, jurors, and

undersheriffs, it did not extend to the sheriff, and the disqualification under the Lands' Clauses' Act prevailed. The rule would therefore be made absolute for a certiorari.

*Regina v. Hicks.* Jan. 24, 25, 1855.

**TORQUAY MARKET ACT, 1852.—INFORMA-  
TION FOR OFFENCE UNDER.**

*Held, that under the Torquay Market Act (15 & 19 Vict. c. cxxviii.), s. 31, an information against an offender against the Act, cannot be laid by an inhabitant of the town, but by the market company; and a conviction was quashed imposing a penalty where they had not laid the information.*

It appeared that the defendant had been convicted by the justices under the Torquay Market Act (15 & 16 Vict. c. cxxxviii.) for having sold goods in the town, neither in his own shop nor in the public market, and ordered to pay a penalty to the company.

Coleridge for the defendant contended, that the information not having been laid by the company but by an inhabitant, was bad, citing s. 31, which enacts, that "after the market-place constructed under this Act is opened for public use, every person, other than a person being a licensed hawkers," &c. "who shall sell or expose for sale at any place within the parish of Tormoham other than in the market-place or in his own dwelling-place or shop, any article," &c., "shall forfeit and pay the company any sum not exceeding 40s."

S. Carter, contra.

Cur. ad. vult.

The Court said, that under the section cited, the company could alone lay the information, and that the conviction must, therefore, be quashed.

*In re Philip Vaughan.* Jan. 29, 1855.

**ATTORNEY.—MALPRACTICE.—PAYMENT OF  
WITNESSES.—AFFIDAVIT OF INCREASE.**

*Where an attorney, in an affidavit of increase, swore to payments to witnesses which had not at the time been made, the Court, strongly reprobating the practice, suspended the attorney from practice for two years, and held that the fact of an undertaking having been given did not alter the case.*

THIS was a rule granted on April 26, 1853, calling upon Philip Vaughan of Lampeter, in the county of Cardigan, to show cause why he should not be struck off the Roll of Attorneys.

Cause was shown on June 13 following, by the Attorney-General and Giffard for Mr. Vaughan, against the rule, which was supported by Sir F. Thesiger and J. Wilde for the Incorporated Law Society, and it was ordered that the matters be referred to one of the Masters of the Court to inquire therein and report thereon, with liberty to call for further affidavits and evidence.

The facts sufficiently appear from the Master's report, which was as follows :—

"This application arises out of two affidavits of the increased costs in two actions,—*Jane Jones v. Evans and another* and *Thomas Jones v. Charles Jones*,—sworn by Vaughan's clients, Evans, the defendant in the first cause, and Thomas Jones, the plaintiff in the second cause, and in respect of which affidavits the conduct of Vaughan is alleged to have been highly improper.

"1st. *Jane Jones v. Evans and another*.—The charge against Vaughan in respect of this case is :—That he, Vaughan, induced, or permitted Evans, the client, to make the affidavit of increase as to the payments to the witnesses, well knowing that some at least of the witnesses had not been paid.

"This cause, in which Vaughan was attorney for the defendants, was taken down for trial at the Cardigan Spring Assizes, 1852, when the record was withdrawn. In order to obtain the costs of the day a joint affidavit of increase was sworn by Evans and Vaughan on the 26th May, 1852 \* \* \* Vaughan deposing to the general conduct of the cause, and Evans swearing 'that he, Evans, paid, or caused to be paid, to the several witnesses (14 in number), for their loss of time, travelling, and other expenses, the several sums of money set forth in the schedule.'

"The only witnesses to which the attention of the Court is to be directed are—William G. George, undersheriff, for five days, distance 40 miles, 5*l.* 5*s.*; William Thomas, attorney's clerk, five days, 40 miles, 1*l.* 1*s.*; and John Jones, of Pontlanychaun, saddler, five days, 40 miles, 4*l.* 10*s.*

"As to George and Thomas, Vaughan admits that they were not paid in full at the time the affidavit was sworn, but urges in extenuation that 'ever since he has been in the Profession of the law, it has been the practice with him and other professional men, to give verbal undertakings for payments of various sums of money to each other, and for such undertakings to be accepted, and during his professional career he has given numerous undertakings of the sort, and accepted very many, and which undertakings he was in the habit scrupulously to perform; that in treating with George he acted as he had heretofore been accustomed to act and treat with the attorneys during his professional career, in giving him his engagement to pay his charges for attendance, which at the time he gave to George with his subpoena 2*l.* 2*s.*, could not be well ascertained, as it was uncertain when the cause would be tried. That Thomas is clerk to George, and he, Vaughan, acted in the same way towards him by engaging to pay what he was entitled to receive, and which engagement he was personally bound to perform; that he so performed his engagement, by paying George and Thomas the sum specified in the affidavit of increase. That the allowance by the Master on taxation was to George, 2*l.* 12*s.* 6*d.*, and to Thomas, 10*s.* 6*d.*; but that he

paid to George, 5*l.* 5*s.*, and to Thomas, 1*l.* 1*s.*, pursuant to his undertaking.'

"The payments to George appear to have been made as follows :—1*l.* with his subpoena, 1*l.* during the assizes, and 3*l.* on 12th July, 1852, after the charge for perjury against Evans had been instituted. The payments to Thomas were made 5*s.* at the assizes, 10*s.* on the 5th June, and 6*s.* on the 13th July; in all, 1*l.* 1*s.*"

As to the payment of the 4*l.* 10*s.* to the witness John Jones Saddler, the Master, after setting out the evidence, observes that—

"Upon this part of the case is the statement of Jones and his wife opposed by Vaughan alone, for Evans does not appear to be entitled to much credit even so far as he bears on the point; that in corroboration of the Joneses there is also the fact of Vaughan having paid them two or, as they say, three sums of 5*s.*, and also the fact that Jones and his wife made their statements so early as July, 1852, and Vaughan did not cross-examine them, or in any way dispute their statements. He now suggests as a reason for this course that he thought it desirable to reserve his client's defence.

"*Thomas Jones v. Charles Jones of Bromberllan*.—The charge against Vaughan, in reference to this case is :—That at the time of making the affidavit of increase the witnesses had not been paid, as Vaughan well knew. That he prepared the affidavit without being furnished with instructions by his client; and that he induced and permitted his client, an illiterate man, to depose to the affidavit, he, Vaughan, knowing it to be untrue, and the client, Thomas Jones, at the time supposing that it was an affidavit to enable him to receive the damages awarded to him, and not thinking it was an affidavit as to the payments to the witnesses.

"This cause, in which Vaughan was also the attorney of the plaintiff, was taken down for trial at the same Cardigan Spring Assizes, 1852, and referred. The arbitrator afterwards found a verdict for the plaintiff, damages, 40*l.* 5*s.* 3*d.*; and in order to obtain the costs a joint affidavit of increase, prepared by Vaughan, was sworn on the 26th May, 1852, Vaughan swearing to the general conduct of the cause, and Jones, the plaintiff, swearing that for the trial he, Jones, paid, or caused to be paid, to the several witnesses for their loss of time, travelling, and other expenses, the several sums set forth in the first schedule, and that the residence of the said several witnesses from Cardigan and Lampeter, from their respective places of abode, and the number of days they were necessarily absent at the said assizes are accurately set forth in the first schedule thereto. And for the reference that he, Jones, paid, or caused to be paid, to the several witnesses for their loss of time, travelling, and other expenses, the several sums mentioned in the second schedule, and that the residences, distances, and number of days are set forth in the second schedule thereto.

The two schedules are then set out, and the statements in the several affidavits on this part of the case, and the Master thus proceeds:—

*Thomas Jones, the plaintiff, first states—*

"1. Vaughan first presented an affidavit for his signature, stating that 407*l.* 5*s.* 3*d.* was due.

"2. Vaughan did not read over the affidavit, with the exception of the witnesses' names.

"3. That the reason assigned by Vaughan for reading over the names and descriptions of the witnesses, which he did, was to discover whether they had attended.

*John Jones, of Llwynnog, first states—*

"1. He had heard Vaughan state to Jones, the plaintiff, it would be necessary he should make an affidavit the money awarded was due, that Vaughan did not read over the affidavit, or state, Jones, the plaintiff, had to depose to having paid the witnesses.

"2. That he stated Jones, the plaintiff, would make an affidavit to obtain the amount of the award and the costs of the witnesses, that he asked Jones, the plaintiff, whether the whole of the witnesses he had named had been at Cardigan. They corrected some of the names.

"3. That Vaughan stated, the affidavit was to obtain the damages and the costs of the witnesses, that it was then mentioned in presence of Vaughan, he John Jones, of Llwynnog, had not received anything for his attendance.

"From this it will be seen, that to a certain extent these two have varied in their different statements, but not, I think, from each other. It does not, however, appear to me, that this variation is such as to destroy their credit, but on the contrary, that if they had been unscrupulous witnesses, they would not have hesitated to adhere to their first statement, and it does appear to me that there are two strong circumstances against Vaughan. That though his last affidavit is sworn long subsequent to those of the other witnesses, he does not attempt to show any interview or communication between him and Jones, the plaintiff, for the purpose of obtaining the particular instructions requisite to prepare such an affidavit of increase; and he does not deny the letter of John Jones of Llwynnog, of September, 1852, or the interview with him on the 22nd October.

"Much has been said upon the fact which is sworn to by Vaughan, and I think not contradicted, that before the trial the plaintiff Jones undertook to pay the witnesses, but this goes but a very little way to show that Vaughan believed they were paid, or that Jones, the plaintiff, told him so, or gave him the minute instructions necessary to prepare such an affidavit, or that Jones, the plaintiff, knew that by that affidavit he was swearing to having paid them.

"There is another witness, John Hughes, whose evidence is material. He states, that instead of the two sums 5*l.* 10*s.* and 2*l.* 18*s.*, sworn in the affidavit of increase to have been paid to him, he only received 2*l.*, viz., 1*l.* with

his subpoena, and 1*l.* from Vaughan in August, 1852. That Vaughan at the same time promised he would pay all the witnesses within three weeks from that time. Vaughan in his affidavit denies this promise, but he does not deny the fact of the payment. This much corroborates the general statement of Jones, the plaintiff, and Jones, of Llwynnog, and to disprove those of Vaughan, for if Jones had told Vaughan he had paid the witnesses, there would be no reason whatever for Vaughan to pay the 1*l.* to Hughes."

The Master goes into the remaining evidence and reports that:—

"Mr. Vaughan has produced very high testimonials to his character, he states, he has been 32 years in the Profession, and for 30 years a Master Extraordinary in Chancery, that he is a Commissioner for taking the Acknowledgments of Married Women, that he was Clerk of the Indictments and Chancery Clerk in the Western Circuits till their abolition, and his respectability is deposed to by several Magistrates, all of whom have known him for a considerable period, and speak in high terms of his character."

The Report thus concludes.

"Upon the whole of the circumstances of this case, I have to report:—

"That in swearing to the payments to George and Thomas, when an undertaking to pay them only had been given, Vaughan has been guilty of that species of misconduct, of which the Court has on several occasions expressed great disapprobation.

"That as to the payment to John Jones, the saddler, the weight of the evidence, though conflicting, shows that Vaughan knew that he had not, at the time of Evans making the affidavit of increase been paid, as stated in that affidavit.

"That as to Jones, the plaintiff, Vaughan prepared the affidavit without the particular instructions of the client, who, at the time of swearing it, was not aware that he was swearing to payments made by him to witnesses."

Lord Campbell, C. J., said:—"This is a most serious case, and I grieve that such practices prevail, but I am very glad that they are brought before us for our administration. After a careful report by the Master of this Court, I come to the conclusion myself at which he has arrived, and it appears to me that Mr. Vaughan, upon his own showing, and on the facts that are undisputed has grossly misconducted himself as an officer of this Court. It is quite alarming to think that a gentleman in his position should resort to these practices, and that he should retain the reputation that he seems to enjoy. I hope that that is only from the ignorance of those who speak in his behalf, and who express so much esteem and regard for him. I have very great respect for gentlemen in Wales. I think they are just as sensible to honour as any portion of her Majesty's subjects, and if they were aware of the practices which have been common with Mr. Vaughan, I think that they

would by no means so testify in his favour. Now he relies on this custom of the country that an undertaking to pay shall be equal to payment, though this Court has again and again animadverted on, and has reprobated such a notion. The case brought before us shows that he has merely out of his own head set down to fabricate an affidavit of increase, setting down, not in arbitrary manner, but on principles that he has established for himself, a sum that should be allowed for each—representing that it has been paid, and that it shall be sworn that these payments have been made. But it is the prevalence of this practice that makes us hesitate about at once making the rule absolute for striking Mr. Vaughan off the Rolls. He resorts to the generality of this practice by way of mitigation, and though after the censure that he has received the mitigation is very small. However, we are unwilling to pronounce a sentence that would work irretrievable ruin to him, but we wish to mark as strongly as we can our reprobation of such practices; and the rule the Court pronounces is, that Mr. Vaughan, for the space of two years, be suspended from his practice as an attorney. We have not power to go beyond the jurisdiction of our own Court, but we pronounce this sentence in the expectation that the other Courts of Common Law in Westminster Hall, upon the representation of what we have done, may, as is generally done with regard to striking an attorney off the Rolls, pronounce a similar judgment.

#### Court of Common Pleas.

*Harris v. Willis.* Jan. 25, 1855.

**ACTION TO RECOVER DAMAGES FOR COLLISION.—PLEA.—JURISDICTION OF ADMIRALTY.**

*The private act of a steam towing company provided, that if the merits of any case should be adjudicated on in a suit by or against the secretary, it should be conclusive in any other suit for the same demand. To an action against the defendant to recover damages for a collision in the Thames by one of their tugs, the defendant pleaded that the merits of the case had already been adjudicated on by the High Court of Admiralty. On demurrer to this plea, held that it was bad for not showing the tug to be within the jurisdiction of the Admiralty.*

THIS action was brought to recover damages for a collision in the river Thames to the plaintiff's ship from a tug belonging to a steam towing company, of which the defendant was secretary. It appeared that by their private act it was provided that if the merits of any case should be adjudicated on in a suit by or against the secretary, it should be conclusive in any other suit for the same demand. The defendant accordingly pleaded that the merits of the case had been adjudicated on in the

High Court of Admiralty, who found that the accident occurred through the plaintiff's negligence.

*Finslasson* appeared in support of a demurrer to this plea; *Milward*, contra.

The Court said, that the plea should have shown the ship to have been within the jurisdiction of the Admiralty, and that the demurrer must, therefore, be allowed.

#### Court of Exchequer.

*Gibson v. Sturge.* Jan. 13, 1855.

**ACTION FOR FREIGHT ON EXCESS OF CARGO DELIVERED TO THAT SHIPPED.**

*Held (per Pollock, A. C. B., and Alderson, and Platt, B.B., dissentiente Martin, B.), that the claim for freight is regulated by the quantity of cargo shipped at the port of departure, and not by the amount delivered at the port of arrival.*

*Therefore, where a cargo of grain was increased in bulk on the voyage, in consequence of water being shipped during foul weather, a rule was made absolute to enter the verdict for the defendant, in an action to recover freight on the excess in the quantity delivered over that shipped.*

It appeared that a cargo of wheat was shipped by the defendant at Odessa, on board the plaintiff's vessel, for delivery in London or Liverpool at a certain freight, and that in consequence of bad weather encountered on the voyage, a quantity of water was shipped, which had swelled the grain, and the bulk on delivery was found thereby to exceed that shipped by about 164 quarters, and the plaintiff sought to recover freight on such excess. On the trial before *Martin, B.*, the plaintiff obtained a verdict, subject to this motion to enter it for the defendant.

*Watson* and *C. Pollock* showed cause against the rule accordingly obtained, which was supported by *Brumwell* and *Selfe*.

*Cur. ad. vult.*

The Court (per *Pollock, L. C. B., Alderson* and *Platt, B.B.*, dissentiente *Martin, B.*), held, that the plaintiff was not entitled to recover the freight in question, as the quantity was to be regulated by the cargo shipped at the port of departure, and not by that delivered at the port of arrival. The right to freight was for carrying cargo from the port of shipment to that of delivery, and here the excess might have only been carried a few miles or days, and besides, as the increase had damaged the consignee, it was repugnant to justice that he should pay freight for the excess. It was said that this would lead to inconvenience from delay in payment of freight until the exact measurement could be ascertained, but, on the other hand, the inconvenience would be great and dangerous if the shipowner had the power of increasing his freight by damaging the cargo. The plaintiff was not, therefore, entitled to recover, and the rule must be made absolute to enter the verdict for the defendant.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

— Still attended at your service. — *Shakespeare.*

SATURDAY, FEBRUARY 10, 1856.

### PRIVATE BILL LEGISLATION.

#### PARLIAMENTARY FEES AND EXPENSES.

BESIDES the serious objections which exist to the principle usually involved in passing private Bills, repealing to a certain extent the general law of the land, in favour of particular individuals or joint-stock companies, there is an enormous grievance in the amount of the fees required to be paid to the officers of both Houses of Parliament.

If the parties are justly entitled to be relieved from some oppressive operation of the general law, the relief should be granted at a reasonable expense. If a defect of the title to an estate ought to be removed by legislative authority in the relaxation of arbitrary rules, the object should be effected without requiring an elaborate and costly machinery to be set in motion by both Houses of Parliament which can only be successfully worked out by the aid of many learned counsel, solicitors, and agents, the cost of which often amounts to many thousand pounds.

There has long, also, been a great and still increasing grievance in the number and amount of the fees claimed by the parliamentary Bar. There was formerly a plausible reason for the amount of this class of fees, as compared with the ordinary fees in the Courts of Law and Equity, because there was no regular parliamentary Bar, and counsel who were called from their regular Courts and required to give exclusive attention to the business before Committees of either House, and were obliged to decline the briefs which they would otherwise receive in their ordinary practice,—such counsel were entitled to

larger fees, as well on that account, as in respect of the superior importance of the parliamentary cases thus entrusted to them.

On this subject we would direct the attention of our readers to the evidence given before the Private Bill Committee of 1847, on the subject of professional practice in parliamentary business. It is observed in the last number of the *Edinburgh Review*, that Mr. Baxter, a solicitor of great experience and extensive practice as a parliamentary solicitor (and therefore not very likely to press unfairly against the Profession), was questioned on the subject of the expenses and delay of inquiries before Select Committees on Private Bills and the professional practices which conducted to them. He was asked whether, if a railway cost 300,000*l.* or 400,000*l.* before it got through Parliament under the existing system, he had any suggestion to offer for the purpose of diminishing expense? and he answered as follows:—

“It has been suggested, whether it would not work wholesomely to lay down a rule, that not more than two counsel should be heard in a case. I am afraid that under the existing system such a rule would not be practicable; it would not work well. The Committee are aware that the present system is one of a very peculiar character, and one that requires consideration, if you come to deal with the question of lessening the expenses before Committees of the fees of counsel and the attendance of counsel, and so forth. The present system is, that of comprehending within the space of about two months all the judicial inquiries that ensue in one House of Parliament upon the subject of railways. I have taken the Committees of last year. I find about 500 sittings of Committees; I find that the average number of Committees sitting daily was 17, and I find that the greatest number of Committees sitting on one day was 24.”

He is asked if it would not be quite possible for each Committee to say, "we will only hear two counsel;" and he replies,—

"That course would compel us to choose a counsel who would sit in the Committee during all the time of its proceedings, and conduct the case; but that would deprive us of all the leading counsel, and we should be driven where we must have a leading counsel, to give him 1,000 or 2,000 guineas, in order to induce him to come into the Committee and sit down till the case is heard, because he would have to sacrifice his attendance on other Committees."

Inquiry is then made, whether the same thing does not take place in all the Courts of Law, and, therefore, why should this exception be made in this case?

"Because (he says) the Parliamentary tribunal forms an exception from all others; it is the only Court in the country in which there are 24 separate tribunals sitting at the same moment hearing different cases."

The witness is then requested to state what is the fee to a leading counsel? and the greatest amount he has ever paid to one counsel for one bill? and he says perhaps "2,500*l*."

And being asked, whether in Common Law proceedings he ever gave to any counsel 2,500*l*. for any private business, either in the Courts of Law or in the House of Lords? he answers—"No, never."

Mr. Baxter is then asked, Why should a counsel attending a Committee of the House of Commons or the House of Lords receive so much larger fees than a counsel in the Common Law Courts? The answer is,—*"That the magnitude of the interest at stake is the only good reason for their receiving larger fees."*

The witness afterwards describes the practices prevailing in *Committee business* of counsel who are much employed, and who accept a number of engagements for the same morning, and make a show of keeping them all by paying an occasional visit to each Committee-room,—interfering in the midst of the cross-examination of a witness, or coming to the aid of a junior and being listened to when they authoritatively tell the Committee,—*"In such and such a case I remember so-and-so was decided."* Mr. Baxter contrasts this state of things with the practice of Courts at Westminster Hall, and observes:—

"You dare not allow a counsel to come in and interfere in the middle of an examination there. The difference entirely lies in the nature of the judicature before which you stand. In the one case there are Judges who keep you strictly to the rules of law, and whose inference is immediate if there is anything said by your own witness against you or elicited against your antagonist; the inference is immediate; the Judge's eye is upon it; you see at once that it

gives a turn to the case, so that you dare not run any risk. But it is very different with a Committee of the House of Commons. It is a desultory tribunal; you take all sorts of courses; you offer all sorts of evidence, you make all sorts of observations,—not having a presiding mind familiar with judicial proceedings."

It is next asked, whether counsel before a Committee of the House of Commons or of the House of Lords may, in fact deviate from the proper course of examination much more than they may before an ordinary legal tribunal? And he says, *not only they may do it, but they do it continually.*

He is asked, whether, in Committees of the House of Commons, he would wish a strict legal line to be taken and adhered to? And he answers in the affirmative,—stating that being accustomed to hear arguments in the Courts of Law and in the Courts of Chancery, and to hear arguments before Committees of the House of Commons, the difference is exceedingly marked.

Looking at the practice before the two Houses of Parliament and looking at the practice of the Courts, he is asked whether anything like the amount of ability, on the part of counsel, is necessary before Committees of the two Houses of Parliament as in the Courts of Law? and he says he has no hesitation in saying that he thinks not.

Such being the case, inquiry is made whether a gentleman practising before Committees of the Houses of Parliament or a gentleman practising before the Lord Chancellor or the Judges of the land receives the best emoluments? And the Committee are informed the former without exception, to a very largely different amount.

Mr. Baxter is then asked whether many young men, who have never had two briefs in their lives, on coming before Committees of the House of Commons, receive the same amount of fees as experienced practitioners in the Courts of Law? And he says, "No doubt;" but, he adds, "there is this countervailing circumstance, that a man who comes into the House of Commons loses his standing in the Law Courts. Men have been drawn from the Law Courts within the last two or three years in very great numbers; but before that time the Profession always considered that when a man was known to practise before Committees of the House of Commons, he was not competent, from experience and practice, to lead in the Common Law Courts." \* \* \*

"It is a common saying in the Profession, that Committees of the Houses of Parliament are the very worst school into which to send a young barrister. High fees, little legal knowledge, and all sorts of irregularities."

The reviewer, on this state of the case, proceeds to make the following animadversions:—

"So here we find a class of barristers not competent, from experience and practice, to conduct business in the Common Law Courts," not possessing "anything like the amount of ability essential to success there, and yet receiving an 'enormously different' emolument; and then these two circumstances naturally produce a third; for Mr. Baxter, in summing up the characteristics of the Parliamentary Bar, states them as consisting in "*high fees, little legal knowledge, and all sorts of irregularities.*"

As one instance of these "*irregularities,*" we find gentlemen at the Parliamentary Bar undertaking for very large fees what they cannot possibly perform,—viz., to advocate, without limit, as many cases as are offered them, though they are set down for hearing in different tribunals sitting at the same hour.

"As the practice of late has been," say the Committee of 1847 in their report, "a counsel may be paid for attending in 20 committee-rooms on the same day, and he is therefore unable to attend and to do justice either to his clients or to the tribunal before which he is to plead. The mischief is universally acknowledged and deplored. The parties are subjected to enormous expenses, the Committees to confusion and delay, and the Parliamentary Bar, if not the entire Profession, to the reproach of receiving fees for work which it is impracticable for them to accomplish."

Now, whatever excuse may be offered for the occasional *absence of counsel* in the Courts at Westminster Hall, where it can rarely be ascertained beforehand at what day or hour any particular case will come on to be heard, and where a very moderate *honorarium* is given to secure at all risks the services of such counsel as the discretion of the attorney may select, it seems to us wholly inexcusable in a barrister to deliberately accept a brief to attend a Parliamentary Committee, and then engage himself elsewhere. A brief to attend a Private Bill Committee is always, or ought, by the etiquette of the Profession to be preceded by a *special retainer*. The brief, unlike an ordinary *nisi prius* brief, is taken with full intimation as to the precise time when it is to be attended to; and the old etiquette of the Profession, which required special retainers and special fees for each day's attendance before Committees is still at all events professed to be observed; and this etiquette gives each barrister, junior or senior, that is fortunate enough to be engaged in Committee business, a distinct special fee of 10 guineas for every morning's attendance, and of five guineas for every evening's consultation on each case, so that the 15 guineas a day is earned so long as the Committee drags its slow length along; and it is something more than *irregularity* at all events for either leader or junior to be paid by the day in this liberal manner, and to absent himself from his work."

A remedy for this public and professional evil might be effected by establish-

ing a Judicial Parliamentary Tribunal, holding the same position with the Houses of Parliament as the Judicial Committee holds to her Majesty's Privy Council. Three or five eminent lawyers should constitute the Court, and the present Parliamentary Bar, or such part of it as should be found equal to the duty, would form a separate Bar in constant attendance whenever the Judicial Tribunal sat. Rules of practice would be laid down, and justice would be done without unnecessary delay or expense. The fees and emoluments of practitioners in both branches of the Profession would resemble those in the House of Lords or Privy Council, somewhat larger than in the majority of cases in the Courts of Law and Equity, because the business would be generally more important and difficult; but the enormous grievance now complained of would cease to exist.

## NEW ORDER IN CHANCERY.

### COSTS OF PROCEEDINGS IN THE JUDGES' CHAMBERS.

February 2, 1855.

THE Right Honourable Robert Monsey, Lord Cranworth, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Sir John Romilly, Master of the Rolls, the Honourable the Vice-Chancellor Sir Richard Torin Kindersley, the Honourable the Vice-Chancellor Sir John Stuart, and the Honourable the Vice-Chancellor Sir Wm. Page Wood, doth hereby, in pursuance of an Act of Parliament passed in the 15 & 16 Vict., intituled "An Act to abolish the office of Master in Ordinary of the High Court of Chancery, and to make provision for the more speedy and efficient despatch of business in the said Court," and in pursuance and execution of all other powers, enabling him in that behalf, order and direct as follows:—

Where the preparation of any case or matter to lay it before the Judge in Chambers on a summons, shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the Judge to deserve higher remuneration than the ordinary fees, the Judge may allow to the solicitor by a memorandum in writing expressly made for that purpose, and signed by the Judge, specifying distinctly the grounds of such allowance, such further fee not exceeding ten



guineas, as in his discretion he may think fit, instead of the fee of one guinea authorised in such a case by the order of October 23, 1852.

(Signed) CRANWORTH, C.  
J. ROMILLY, M.R.  
B. T. KINDERSLEY, V.C.  
JOHN STUART, V.C.  
W. P. WOOD, V.C.

## NEW ORDER IN BANKRUPTCY.

### REMUNERATION OF OFFICIAL ASSIGNEES.

February 3, 1855.

THE Right Honourable Robert Monsey Lord Cranworth, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable the Lord Justice Sir James Lewis Knight Bruce, the Right Honourable the Lord Justice Sir George James Turner, Edward Holroyd, Esq., and Edward Goulbourn, Esq., Sergeant-at-Law, two of the Commissioners of her Majesty's Court of Bankruptcy, doth hereby, in pursuance and execution of the powers of an Act of Parliament passed in the Session of Parliament holden in the 17th and 18th years of the reign of her present Majesty, intituled "An Act for regulating Appointments to Offices in the Court of Bankruptcy, and for amending the Laws relating to Bankrupts," and of all other powers enabling him in that behalf, Orders and Directs, that from and after the 10th day of February instant, the remuneration of an official assignee for his services in respect of a bankrupt's estate, shall, until further order be calculated and allowed, according to the scale prescribed by the Rule numbered 130, comprised in the Rules and Orders made on the 19th day of October, 1852, in pursuance of the "Bankrupt Law Consolidation Act, 1849," subject to variation in any particular case to be assigned by the Commissioners in writing, and filed with the proceedings.

(Signed)

CRANWORTH, C.  
J. L. KNIGHT BRUCE, L. J.  
G. J. TURNER, L. J.  
EDWARD HOLROYD, Commissioner.  
EDWARD GOULBOURN Commissioner.

## PROPOSED MINISTER OF JUSTICE.

LORD BROUGHAM in his recent Letter to Lord Denman,<sup>1</sup> contends, that there should be a department charged exclusively

with the *judicial* affairs of the State,—in a word, a "Minister of Justice," other than the Lord Chancellor,, whose attention is distracted by his various duties as a Judge, and whose responsibility for the errors and oversights committed is incalculably lessened, by the consideration of his having those other duties to discharge. In the letter referred to, Lord Brougham thus proceeds:—

"As to some of these acts of a Minister of Justice, the Lord Chancellor can have no responsibility at all, and these among the most important. He appoints the Judges of the Superior, and of the County Courts, and the Court of Bankruptcy; but he neither appoints those of the Insolvent Courts nor the Recorders of corporate towns. These, although judicial officers, are appointed by the Secretary of the Home Department,—an arrangement about as rational as would be that of making the Foreign Secretary, from his knowledge of our diplomatists, select ministers to some Courts, but giving the appointment of others to the Chancellor, who could know nothing of the matter. So all Colonial Judges are named by the Secretary of State; all East India Judges, by the Directors and the Board of Control; all Scotch Judges both superior and inferior, by the Home Secretary. He being in utter ignorance of the Scotch Bar, is supposed to let the Lord Advocate recommend, who thus may one day raise a brother barrister to the Bench, and the next, argue a case before him. It is not possible to conceive a more important duty than that which is thus dispersed among different departments, and in the great majority of cases exercised by persons who are of necessity incompetent to make the selection, and who act under nothing like responsibility for the choice made. If it be said that the Chancellor is generally asked his opinion before the appointment is finally given, I answer of my own knowledge, that in many cases he is not consulted at all; but if he were, the question is only put—"Do you know any reason against this person being appointed?"—not, "Is he the fittest or nearly the fittest for the office?" And thus he is really not responsible for the appointment, or rather there is no one responsible; the Secretary of State says, and truly says, the Chancellor made no objection, and the Chancellor as truly says the appointment was not mine. This, then, is one of the reforms administrative and not organic, which we may hope at length to see effected. Assuredly the proceedings in the last session make it very difficult to avoid the conclusion which had been long since arrived at, even without the strong light thus afforded. But it is far from being the only change of the same description which is required.

Nothing can be more absurd than the footing upon which the office of the Crown lawyers stands. To pass over the glaring defect in our criminal jurisprudence, on which I have so often dwelt—the want of a public pro-

<sup>1</sup> See *Law Review* for Nov. last.

secular; can anything be worse than the Attorney and Solicitor-General holding their important offices with a merely nominal salary, and consequently having the constant temptation to prefer their other clients to the Crown? It is no defence of this plan that those learned persons do not often neglect their official duties; enough that they are always under the influence of the inducement to neglect; the public service has a right to better security against non-feasance, as well as against misfeasance, than is afforded by extraordinary self-denial in those employed; and, indeed, whatever may be the conduct of the Crown lawyers in their professional capacity, it is a fact undeniable that they are not seldom wanted in the House of Commons when obliged to be absent in attendance upon their private practice.

"It has been proposed to give them an ample salary, and require undivided devotion to their official duties,—that is the sacrifice of their present practice. But the authors of this proposal entirely forget that it would exclude the first men at the Bar from these offices, because no one could afford to take a precarious place and so lose his practice, which, in the event of losing his office after a year or two's possession, he would have little chance of regaining. That they must be allowed to continue their practice is, therefore, clear enough; but surely a moderate salary should be given,—enough to justify the government in requiring that they never should be absent from town on special retainers. This is perhaps the only material change that can safely be effected in these offices; but it would be a very great improvement, and would prevent the possibility of some things again happening which we have occasionally had good reason to complain of."

#### NOTES ON RECENT STATUTES.

##### EQUITY JURISDICTION IMPROVEMENT ACT.—RECEPTION OF BROKERS' BOOKS AS PRIMA FACIE EVIDENCE.

A BILL was filed by Messrs. Ewart & Co. against Mr. Williams, to take an account of various transactions between them. It appeared that Mr. Williams had engaged in a great many transactions on the Stock Exchange, in shares and otherwise, and had employed the plaintiffs from time to time to transact the business for him.

The plaintiffs moved that their books might be received as *prima facie* evidence of the truth of the matters therein contained, under the 15 & 16 Vict. c. 86, s. 54.

Vice-Chancellor *Kindersley* said:—"It appears that the custom of stockbrokers in their business is this: the principal himself goes to the Stock Exchange, and conducts the business of purchasing and selling shares with

other brokers; and then when that is done, the clerk makes entries of the business which his principal informs him has been done, and these entries are made in books which each broker keeps, and in which are entered his dealings with other brokers. Now, the bill is filed for an account of transactions of this kind. The defendant set up this kind of defence:—He says, 'I did employ you, it is true, as my broker; but you have attempted to charge me with business in which I never engaged.' Now, he might, if he had thought fit to do so, have examined Ewart or his partners, and they would have stated on oath what the facts were, and their evidence might have been used. But the cause has been heard; and there was no evidence at all at the hearing in support of the contention of the defendant Williams. In this state of things, all that could be done was to decree an account, and that account is now being taken. In taking it, Ewart & Co. say, our clerk who made these entries is dead; it is proved, however, that the entries are in his handwriting. Ewart & Co. say, that from the very nature of the business, it is impossible to prove the fact of each transaction which is entered having taken place. Now, precisely that sort of difficulty was the ground on which the Legislature proceeded to enact, that this Court may allow books in which entries are made to be *prima facie* evidence; but then it is the duty of the Court to look into the books, to see whether, from their character, they ought to be so treated. Here, the defendant having a full opportunity of examining the books, puts forth a suggestion that there are entries requiring explanation, and that there are many defects showing great irregularity in the keeping of these books. In consequence, the Court has gone through them with much minuteness, and the result of the examination is this: it has left an impression on my mind that the books are regularly kept. In any set of books, it is not to be expected that there will be no part open to the objection of requiring some explanation. But it appears to me that in these books there is less ground for such objection than I should have expected. Having examined them, I think they should be *prima facie* evidence. But it having been urged that the issue raised was this, that there were fictitious entries, I thought it right that the validity of the transactions, attributed to several individuals named, should be vouched by the evidence of those individuals. That has been done, and the result is this, that out of about ten persons, three or four are dead, or have retired from business, and have left no books by which the reality of the transactions alleged with them can be proved; but, as to the major part of those individuals, it is proved, either by the evidence of themselves, or of their partners or of clerks, that the transactions took place exactly as represented in the books of Ewart & Co. Then it has been urged also, that the probable effect of making these books *prima facie* evidence is that they may become conclusive evidence;

that, however, may be the case with any books. Then, further, it is said that the intention of the Legislature was, that the section should only apply to the case of books open to both parties. If that were to be the construction put upon the Act, it would neutralise its effect with regard to the greater part of the transactions of mankind. I find nothing in the language of the Act itself to show such an intention, and I cannot, for the purpose of construing it, look at the intention expressed by the Commissioners." *Ewart v. Williams*, 3 Drewry, 21.

## POINTS IN EQUITY PRACTICE.

### AMENDMENT OF BILL AFTER REPLICATION FILED.—COSTS.

A BILL was filed by a rector claiming payment of certain small sums in lieu of tithes. The defendants answered denying the plaintiff's title, and a replication was then filed. It was afterwards discovered in advising on evidence, that certain tithe-books, the existence of which was previously unknown, showed that several payments had been made, but not as stated in the bill. These books were in the plaintiff's custody, being in the vestry-room, but were under the charge of the collector, who was unable, through illness, to attend to the matter.

On an application, by way of appeal from the chief clerk, for leave to withdraw the replication and to amend, Vice-Chancellor *Kinsderley* said: "The question is, whether reasonable diligence would have enabled the plaintiff to introduce his amendments sooner. He put in the original statements on the information of the proper person to inform him. The books in question, it seems, were deposited some time previously to the institution of the suit in the vestry, and it is of course possible to suppose they might have been got at; but after the report of the collector, it was not, I think, excessive negligence in the plaintiff not to ask for the books. It was not such a want of diligence as to preclude me from giving leave to amend. On the other hand, if the plaintiff by amending puts the defendant to additional expense, as it is no fault of the defendant, he ought not to be put to that double expense. I shall, therefore, give liberty to withdraw replication and to amend the bill, the plaintiff paying the costs of the suit up to the present time, including the costs of this application, and filing the amended bill within a week." *Champneys v. Buchan*, 3 Drewry, 5.

## PROTECTION OF PURCHASERS AGAINST JUDGMENTS' BILL.

LORD *St. Leonards*, on the 6th inst., brought in a bill for the better protection of purchasers against judgments entered up against vendors. His lordship stated that one object of the bill was to remedy certain anomalies and doubts which at present existed in and as to the law on the subject; that another was to place the Counties Palatine of Durham and Chester on the same footing with respect to it as the rest of the kingdom; another object had reference to the registration of annuity deeds. These deeds were formerly directed to be enrolled, in order to the protection of grantors of annuities against usurious transactions. When the Usury Laws were repealed last year, the Act for enrolment of annuities was very naturally repealed also. He proposed now to re-enact the registration of these deeds, and he did so for this reason. Although he was opposed to the registration of mortgages, purchases, and settlements of land, he drew a wide distinction between dealings with the estate and the title-deeds thereof, and such encumbrances as were created upon it by *lis pendens*, judgments, &c. He thought the latter class of encumbrances should be registered; and he proposed now to enact that no life annuity should be a charge against lands, tenements, and hereditaments, unless it was registered. The reason why he proposed to include this with the other classes of incumbrances to which he had referred was, that they were general incumbrances, that the title-deeds of an estate never went along with the annuity, and that therefore it was such an encumbrance as a purchaser ought to have the means of being protected against.

The Lord Chancellor was by no means opposed to the bill which his noble and learned friend had just laid on the table. He was, however, sorry to hear that he still retained his objections to the registration of assurances, because it was his (the Lord Chancellor's) intention to introduce a bill during the present Session, not for the general registration of assurances, but for carrying it one stage further, by establishing a registration of mortgages.

Lord Brougham entirely concurred with his noble and learned friend on the woolsack, in approving highly of the measure introduced by his noble and learned friend near him. He must at the same time say, that he thought it would be of very great advantage to the jurisprudence of this country, if we had such a functionary as a Minister of Justice. Had we had such an official, it would have been perfectly impossible that such anomalies as those pointed out by his noble and learned friend should have occurred, that, for example, the Bill of 1840 should have been brought in when a similar measure, introduced by his noble and learned friend, had passed but a year or two before.

Lord Campbell expressed his concurrence in the principle of the Bill, not despairing of a general Bill on Registration.

The Bill was then read a first time.—From the *Morning Chronicle* of 7th February.

## UNCLAIMED DIVIDENDS IN CHANCERY.

### CAUSES UNDEALT WITH FOR 15 YEARS.

THE Lord Chancellor has directed public notice to be given of the following causes, matters, and accounts, in which it appears that the dividends upon certain stocks standing to the credit of such causes, matters, and accounts, have not been dealt with for upwards of 15 years.

In any petition which may be made respecting such dividends, the fact of such period having elapsed without any dealing therewith, must be expressly stated on the face of the petition.

[January, 1855.]

Allen v. Callow. The defendant Mary Callow's account

Ames, Mary, a lunatic

Alston v. Males. Account of the trustees of Holton charity

Arnold, Lumley, Esq., ex parte the Purchaser or Purchasers of the Estates

Andrews v. Sewell and Andrews v. Lord Hawks

Attorney-General v. Digby, Lord

Attorney-General v. Dobyns

Attorney-General v. Dunn

Attorney-General v. Foster, in Master Farrer's Office

Attorney-General v. Fraunces

Attorney-General v. Radnor, Earl of

Attorney-General v. Scott, William, and Nathan Firth

Attorney-General v. Southgate, James Melow's legacy account

Attorney-General v. Sedgwick

Attorney-General v. Sayer

Attorney-General v. Trevellyan

Attorney-General v. Webb. The defendant Dorothy Rious' account.

Attorney-General v. Wigmore

Best v. Best. The defendants Henry Hardinge, Frances his wife, and their children's account.

Barry v. Barrett and Stanley v. Smith. On account of the profits of the real estate of Hugh Smith, Esq.

Benson, otherwise Debenson, v. Barlow

Bradshaw v. Bradshaw. The account of the Darcy Lever estate

Boys v. Barker

Barker v. Barker. The infant children of Peter Henry Barker

Butler v. Basnett, Sarah Wallen, her account

Baker v. Baker, and in the matter of Catherine Jane Baker, an infant

Bishop v. Baker

Bowker v. Beswick. Richard Beswick and his children's account

Bowater v. Burdett and Rigge v. Bowater

Bedell v. Crank

Birch v. Crossland. The account of the estates devised to the plaintiff Sarah Birch and her children

Birch v. Crossland. The account of the estates devised to the defendant John Crossland and his children

Browne v. Dutton. The defendant Ann Dutton the elder's settlement account

Bodens v. Dod

Bennett v. Dinely

Bariff v. Footman. The defendant Richard Ray, deceased

Brown v. George. The legatees' account

Becke v. Gibson. Thomas Mawmell's account

Becke v. Gibson. The schoolmaster of Heighington's account

Bell v. Hawley

Brewer v. Hawys

Becher v. Heath

Belson v. Hunter. The annuity account

Belson v. Hunter

Brown v. Jones. The account of rents of the leasehold in Dunk and Halifax Streets

Burgis v. Jackson

Bradley v. Kidd and Bradley v. Rayment. The share of the infant defendants Elizabeth Rayment and Maria Rayment, subject to the estate for life of the defendant James Rayment, as tenant by the curtesy

Butler v. Kitson. The account of Cuthbert Potts Butler's legacy and interest

Butler v. Kitson. The account of George Butler's legacy and interest

Butler v. Kitson. The account of William Potts' children

Bassett v. Leach

Bourgeois v. Lankshear

Ballard v. Milner

Bruesius v. Morgan, William Sparkes, and Edmund Bridges, Bart.

Boyd (Walter), Paul Benfield, and James Drummond, bankrupts. The account of John Bailey

Boyd (Walter). The account of George Prathernon

Barton v. O'Callaghan

Bickley v. Penny and Wilkes v. Penny

Beard v. Pinder

Bristol, ex parte the Trustees for executing an Act for repairing, widening, and improving the several roads round the City of; and for making certain new lines of road to communicate with the same. The account of the lands devised by the will of Dorothy Popham.

Blackshaw v. Rogers and Snelson v. Rogers. Margaret Cowper's contingent account

Blackshaw v. Rogers and Snelson v. Rogers. Frances Roberts and her children's account

Birch v. Rous. The marriage settlement of John Birch and the plaintiff Ann Birch

Biddulph v. Roberts

Brown, ex parte the Children of Benjamin

Edward, or other the parties entitled to Nos. 7 and 8, Dog Row, in the parish of St. Matthew, Bethnal Green

Bawden v. Sharland. The personal estate of Henry Shortridge Cruwys, deceased

Braithwaite v. Sayner

Blackett v. Stoddart and Allgood v. Blackett

Bullock v. Stones

Brice v. Stokes. The account of the testator John Taylor's personal estate

Brice v. Stokes. The account of Harriet Sparrow's legacy and interest

Brice v. Stokes and Brice v. Younge

Brice v. Stokes and Brice v. Younge. The account of John Taylor's personal estate

Bennett v. Taylor

Baldwin v. Taylor and Spicer v. Taylor. The contingent account of the children of James Baldwin, deceased

Bristow v. Warde. Catherine Fraser's account

Bristow v. Warde. The defendant Frances Neave's account

Their Excellencies the Advocate the less and Grand Council of the Laudable City and Canton of Berne, in Switzerland v. Walpole. The bonus account

Bertie v. Wenman, Lord Viscount. The personal estate of the testator, Peregrine Bertie Barnes v. Willock. Elizabeth French's legacy account

Butler v. Wise

Ex parte Sir George Cayley, Bart., Digby Legard, Esq., and the Rev. John Gilby, clerk, and their successors, directors, appointed in and by an Act of Parliament passed in the 39th and 40th years of the reign of King George the Third, entitled "An Act for draining, embanking, and preserving divers tracts of Land with the Township of Muston, in the Parish of Hunmanby, and also within sundry other Parishes, Townships, or Places adjoining or near to the Rivers Derwent and Harford, in the East and North Ridings of the County of York

In the matter of Ellen Spencer Carter, an infant

Carlisle, ex parte the Right Rev. the Lord Bishop of

Cheyne v. Apreece. A fund for a minister to preach to the poor prisoners at Lincoln.

Cheyne v. Apreece. (Cause only)

Cheyne v. Apreece. A fund for purchasing religious books.

Cheyne v. Apreece. A fund for the poor, Palestine

Cheyne v. Apreece. A fund for the poor prisoners

Cheyne v. Apreece. A fund for the French Protestants

Cheyne v. Apreece. A fund for the redemption of slaves

Cary v. Albett

Cloves v. Awdry. The plaintiff Caroline Maria Cloves, the infants legacy and residuary account

Constable v. Adams. Account of plaintiffs, Thomas Constable and Mary his wife

In the matter of John Carter. The separate account of Ann Goodenough, wife of George Frenchard Goodenough, Esq.

Carter, the Rev. George, in the matter of Carter, in the matter of Ann Canterbury, in the matter of the Dean and Chapter of

Clark v. Addington

Constable v. Adams. Account of Edward Ind and Sarah his wife

Constable v. Adams. Account of David Grantham and Henny his wife

Constable v. Adams. Account of plaintiff Thomas Constable and Mary his wife

Clopton v. Barnard

Chambers v. Brailsford. The account of Joseph Greasy and Ann his wife, the annuitants

Cocks v. Bateman

Cork v. Basford

Cooper v. Bengough. Ann Prout the annuitant's account

Clifford v. Brooke

Chedworth, Lord v. Burton

Crewe v. Crewe. The plaintiff, the infant's account

Cleverly v. Cleverley

Cousens v. Chiene and Cousens v. Chiene. The account of Margaret Chiene, widow, deceased

Camden v. Cooke

Colebrooke v. Colebrooke. The account of Robert James and George Colebrooke

Cooper v. Emery

Cadell v. Grant. Peter Davidson the annuitant's account

Crowther v. Flood

Carthew v. Gooch. Benacre account

Cadell v. Grant. Mary Kalso the annuitant's account

Cadell v. Grant. Mary Dunn Waterman the annuitant's account

Capel v. Girdler

Cunliffe v. Hall. The account of the Fawden Allotments

Court v. Jeffery. The account of the unclaimed and lapsed legacies of the testatrix Alice Short

Court v. Jeffery. The account of the legatee Mary Williams and her children

Court v. Jeffery. The account of the legatee Elizabeth Pester

Cobden v. Lucas. Ann Glover's account

Cowper Lord v. Mackintosh

Coates v. Martin. The poor widows of Newark

Colmore, ex parte Lionel

Copley, Thomas, of Nether Hall, Doncaster, in the West Riding of the county of York

Clarke v. Oliver

Castle v. Outhwaite

Carter v. Peele

Carter v. Peele. The interest account

Cotton v. Pedley

Covert v. Peachey. The plaintiff Charles Vector's account

Croose v. Price. Thomas Fletcher's account

- Croose v. Price. Ann Croose's appointment.
- Cockburn v. Raphael. The account of the late defendant Anna Moorat
- Cruwys v. Rolle, Lord. The defendant Francis Coleman and James Martin, their account
- Campbell v. Rucker. Jane Campbell's annuity account
- Conyngham v. Savage
- Carruthers v. Stockley. — Blackley and Martha his wife, their account
- Castleden v. Turner
- Clayfield v. Washbourn. The account of George Peglar and his children
- Cook v. Weeley
- Crosthwaite v. Wood
- Dunbar v. Boldero. The account of the outstanding personal estate of the testator, Alexander Gray
- Draper v. Drax
- Dilley v. Jewell
- De Gorgollo v. Garcias
- De Gorgollo v. Garcias. The account of the bills of lading and certificate, numbered 24, 181, 188, and 199
- Dick v. Lushington. The account of the servants of the testator James Ellis, in India
- Dering's Infants v. Lambard
- Dixon v. Langhorn
- Derecourt v. Mann. The principal account
- Drummond v. Ridge
- Downes v. Timperon. The separate account of the petitioner, Sarah Marriott Perkins
- Davidson v. Tuthill. The contingent legacy account of Davidson M'Farlan
- Daintry v. Wardle. The defendant, Mercy Plant, the annuitant's account
- Dashwood v. Whatley, Rebecca Gwynne, widow, her account
- Dashwood v. Whatley, Mary and Ann Gravenor, their account
- Devaux v. Wilton
- Edwards v. Geeve
- Elliott v. Halmarack. The account of Jean Stalker, and John Stalker
- Ellington v. Learthmouth. The account of Jessey, otherwise Janet Livingston, deceased
- Enticknapp v. Lee
- John White Elliott, the infant
- Entwisle v. Markland. The defendant Alice Grinrod, the annuitant
- Edes v. Rose. The account of Brooks, son of Jane Brooks
- Farrimond v. Baron
- Fairburn v. Bluit. William Tipping, his wife, and five children, their account
- Fludyer v. Brudenell. Robert Harcourt Weston, Louisa Weston, and Maria Weston's account
- Forster v. Burrell. The costs of the cause account
- Fitz v. Edgar. The account of Michael Burrough, a bankrupt
- Frankland v. Frankland
- Fielder v. Flight
- Fielden v. Fielden. The account of the personal estate
- Fielden v. Fielden. The account of the testator's real estates.
- Fitzgerald v. Field. The account of Robert Moses, the annuitant
- Forsyth v. Grant. The account of William Grant, of Demerara
- Frackleton v. Grubb
- Fourdrin v. Gowdey. The account of the legacy of Mary Vollum
- Fowell v. Hardy. Ann Spencer's account
- Fownes v. Hunt
- French v. Hobson. John Lynch, the annuitant's account
- Fletcher v. Moxon
- Forth v. Morland. Paul Mathieu Barbard, Marquis de Boissiason
- Ficke v. Nelthrop. Anna Earle, and contingent legatees' account
- Furnell v. Nicholls. The annuitant's account
- Freeman v. Parsley
- Exparte the Commissioners of the Froxfield and Tyfield Inclosure Act
- Stephen William Fry, a lunatic. The surplus income account
- Gillespie v. Alexander. Four and Leary's account
- Gillespie v. Alexander. The plaintiff the annuitant's account
- Grellier v. Boston. The account of the next of kin of the testator, John Avara
- Graham v. Buddle
- Gray v. Chiswell. The plaintiff Anne Gray, the annuitant's account
- Goodman v. Denny
- Garland v. Ellis
- Garland v. Ellis. William Atkinson's trust account
- Gist v. Fowke. The account of the testator's legacies and debts
- Gallini v. Gallini. The account of the plaintiff John Andrew Gallini
- Griffiths v. Jay
- Gibbons v. Jones. The account of John Leighton, deceased
- Galloway v. Mackintosh
- Gittings v. M'Dermott. The legacy for the repair of the tombstone
- Gibson, otherwise Shepheard v. Lord Montford. Thomas and Eleanor Gladwin's contingent account
- Gandy v. Nicholls
- Gaches v. Palmer. The account of the real and leasehold estates
- Matthew Chitty, Darby Griffith, and others, Trustees under the Will of Catherine Griffith, late of Padworth, in the county of Berks, deceased
- Gibson v. Stiles and Bumstead v. Stiles
- Goforth v. Ullett
- Gooch v. Wilson. Dorothea, wife of the defendant Thomas Patten the elder, her account
- Gooch v. Wilson. Edmund Rach, and Agnes his wife, the annuitant's account
- Exparte Henry Halsey Lannoy, Richard Coussmaker, and William Bray
- Hamilton v. Allen. The account of Francis Alison in his own right

Hamilton v. Allen. The account of Francis Alison, as administrator of Blaney Alison, deceased

Hawes v. Asplin. The personal estate

Huskisson v. Anthony

Harris v. Abbey

Harris v. Barnes. William Watson's account

Harris v. Barnes. Thomas Davis's account in Master Montagu's office.

Lord Hereford v. Bowling

Humphrey v. Corbett

Howarth v. Dewell, and Howarth v. Collett

Heaton v. Drybutter

Hewitt v. Ellis

Hoyland v. Fardell. To answer the legacy to John Owtram

Hoyland v. Fardell. To answer the legacy to Francis Heartley

Haring v. Gist

Haslewood v. Green

Haly v. Goodson

Harvey v. Harvey. The real estate

Harding v. Harding. The account of the defendant Samuel Harding, the infant

Harmer v. Harris. The account of Elizabeth Woodhouse

Harris, Nicholas v. Harris, William

Hayes v. Hare

Hill v. Hanbury

Hall v. Hall. Frances Hollins's account

Haase v. Haase. Mary Haase's account in Master Eame's Office

Hawkins v. Hillman

Hooper v. Jewell. In Master Pratt's Office

Hughes v. Lyon

Harrington v. Lawrence. The defendant Thomas Perfect, the infant's account

Hewitt v. May

Harrison v. Mansel. The account of Margaret Phillips

Harrison v. Mansel. The account of George Cooch

Hickes v. Nott. The account of John Mott

Holme, Dinah

Howard, Mary, deceased. The account of John William Mules

Heyden v. Owen. The account of the seamen belonging to his Majesty's ships Decade and Argonaut

Hardy v. Oyston

Hamby v. Puckeridge

Horton v. Pulley. John Proctor's legacy account

Horton v. Pulley. Matthew Pugh's legacy account

Harding v. Quin

Hodgson v. Rigby. The defendant Thomas

Hudson's account

Hogg v. Read

Hodder v. Ruffin. Hodder v. Simpson; Hodder v. Troy; and Hodder v. Pickman.

The account of the personal estate of Smart Bradley Troy, deceased

Holme v. Stanley

Holme v. Stanley. The account of moneys arising by sale of the testator's real estates devised in trust to be sold

Hulls v. Turner

Hirst v. Walker

Holmes v. Whillock

James v. Brown. In Master Leeds's office.

Jones v. Chamberlayne

Jegon v. Cotterell. The account of Ann Harriott Barker, the infant

Jolly v. De Tastet

Johnson v. Fothergill. Johnson Forster's account

Jenner v. Hills

Jones v. Hutcheson

Johnston v. Johnston. An account to answer costs

Jones v. Lowe

Inglis v. Phillips

Johnson v. Roche

Jones v. Stott

Jenner v. Earl of Winchelsea

Isdell v. Wynn. The account of the personal estate of Ann Isdell

Jessopp v. Worsley. The Old South Sea Annuities reported due to Fountain Elwin as executor of Phillippa Herbert, deceased

Dodd v. Wynne

Groves v. Evans, and Groves v. Evans and others. The separate account of the defendant James Evans, an infant

In the matter of Sir John Honeywood, Bart. Higginson v. Gilby. St. Dunstan's Charity School

Harrison v. Read

Harris v. Rich

Ilett v. Bryant

Keen v. Aston. In Master Ord's office

Knot v. Allen. The account of the infant plaintiffs William Knox Allen and Ann Knox Allen

King v. Granger. John Granger's account in Master Graves's office

King v. Granger. The contingent account in Master Graves's office

Kilvington v. Harrison. The defendant Catherine Kettlewell's account

Kennion v. Parke

Knapp v. Pollock

Kekewich v. Radcliffe. The account of Richard Preston's purchase-money

Lateward v. Baker. The annuitant's account

Lovett v. Belford

Lewin v. Austen

Lyon v. Deane. Ellen Williamson's account

Lorensa v. De Mesa

Lancaster v. Dixon

Legard, Sir John, Bart., of Storrs, in the county of Westmoreland

Legge, Heneage, of Aston Hall, in the county of Warwick, Esq.

Leicester and Swannington Railway Company, ex parte, the account of the Rector of the Rectory and Parish Church of Glenfield in the county of Leicester

Lloyd v. Edington

Litherland v. Fulcher. The separate account of the children of Sarah Clifford Wilson.

Litherland v. Fulcher

Lawson, otherwise Marriott v. Forman William Henderson and his children, their account

Littlehales v. Gascoyne. The account of interest

Lucas v. Greenwood. The plaintiff Susannah Lucas, the infant's account

Low v. Halden. The account of the defendants Richard Halden and Elizabeth his wife

Lomax v. Holmden and Holmden v. Lomax Lane v. Hobbs. The separate account of Fanny Parker

Long v. Hughes. The account of the children of William Pope

Little, St. Mary, ex parte the Trustees of the Parish of

Lara v. Lara. The defendant Phineas Lara's account

Lawler v. Lawlor, and Lawlor v. Lawlor

Lewis v. Lewis. The annuitant's account

Leech v. Leech. The account of the real estate

Lowe v. Moore

London Dock Company, ex parte the, and Charles Bennett and Sarah his wife and Joseph Lawrence

Leather v. Pennington

Litchfield v. Smith

Lingen v. Sowray

Land v. Inner

Mawby, ex parte Sir Joseph Stephen Hough, and Ann Wright

Macclesfield Canal, ex parte the Company of Proprietors of. The purchase from G. A. Ackers

Montague v. Garrett. The account of John Garrett Bussell, Mary Yates Bussell, Frances Louisa Bussell, William Marchant Bussell, Lenox Bussell, and Charles Bussell, the children of William Marchant Bussell.

Montague v. Garrett. The account of Elizabeth Mallock, Mary Fletcher, Harriett Fletcher, Jane Fletcher, Richard John Fletcher, and Charles Orlando Fletcher, the children of Elizabeth Fletcher

Montague v. Garrett. The account of Louisa Jacane Bussell, William Bussell, Mary Bussell, Ellen Bussell, Agnes Bussell, and John Garrett Bussell

Millsom v. Awdry. The account of the personal representative or representatives of Hannah Coe

Mayo v. Barbor

Macdonald v. Bennett

[To be continued.]

## SELECTIONS FROM CORRESPONDENCE.

### ADMISSION OF ATTORNEYS IN COLONIAL COURTS.

In the case of an attorney, articulated in England, being desirous of admission on the Roll of Attorneys for New South Wales, would the production merely of the Examiners' certificate

be sufficient to entitle him to such admission, or would it be necessary for him to produce his *Common Law admission in England* on the 25<sup>th</sup> stamp? W.

[We think that the original stamped admission should be produced; but if an admission has not taken place, then the articles of clerkship, with the Examiners' certificate, may, perhaps, entitle the applicant to admission in the Colonial Court.—ED. L. O.]

### COSTS OF MORTGAGEE.

Referring to your last Number, page 262, I beg to say, in reply to "P. S.," that I am unable to refer to my former letter as to the mistake. The facts, however, were, that the mortgagor took the principal and interest to the mortgagee, who referred him to his solicitor, who insisted, before he would deliver over the deeds, on payment of nearly 4<sup>l</sup>. for costs, which the mortgagor considers had not been incurred. That sum was not owing from the mortgagor, or, as "P. S." erroneously states, mortgagee. I consider the demand an iniquitous one, and consider that a fee of 6s. 8d. would have amply remunerated the mortgagee's solicitor for any trouble he had in receiving the money and handing over the deeds.

AMICUS.

### ENFRANCHISEMENT OF COPYHOLDS.—DUCHY OF CORNWALL.

I have been informed that the officers of the duchy have lately thought fit to demand *five years'* purchase for the enfranchisement of copyholds situate close to Kennington Common, and that estimated at *rack-rents*, although the houses are let on building leases, the copyholder being only entitled to the *ground-rents*, perhaps a twelfth or fifteenth part of the rack-rents. I have no hesitation in saying that the amount demanded is about the value of the customary fee, and, of course, quite out of the question.

I hope that some public spirited individual will instruct our useful members for Lambeth to bring the grievance before Parliament, or to convene a meeting of the copyholders to petition her Majesty and the two Houses of Parliament on the subject.

CIVIS.

### SPRING CIRCUITS OF THE JUDGES.

(*Jervis, L. C. J., will remain in Town.*)

OXFORD.

Lord Campbell, C. J. and Martin, B.

Wednesday, February 28, Reading.

Saturday, March 3, Oxford.

Wednesday, March 7, Worcester and City.

Monday, March 12, Stafford.

Tuesday, March 20, Shrewsbury.

Saturday, March 24, Hereford.



Wednesday, March 28, Monmouth.  
Saturday, March 31, Gloucester and City.

NORFOLK.

*Pollock, L. C. B. and Wightman, J.*

Monday, March 5, Aylesbury.  
Thursday, March 8, Bedford.  
Monday, March 12, Huntingdon.  
Wednesday, March 14, Cambridge.  
Tuesday, March 20, Bury St. Edmunds.  
Saturday, March 24, Norwich and City.

NORTHERN.

*Parke, B. and Cresswell, J.*

Friday, Feb. 16, Lancaster.  
Tuesday, Feb. 20, Appleby.  
Wednesday, Feb. 21, Carlisle.  
Saturday, Feb. 24, Newcastle and Town.  
Thursday, March 1, Durham.  
Wednesday, March 7, York and City.  
Wednesday, March 21, Liverpool.

MIDLAND.

*Alderson, B. and Coleridge, J.*

Tuesday, Feb. 27, Northampton.  
Saturday, March 3, Leicester and Borough.  
Wednesday, March 7, Oakham.  
Thursday, March 8, Lincoln and City.  
Tuesday, March 13, Nottingham and Town.  
Saturday, March 17, Derby.  
Thursday, March 22, Warwick.

HOME.

*Maule, J. and Platt, B.*

Tuesday, Feb. 27, Hertford.  
Monday, March 5, Chelmsford.  
Monday, March 12, Maidstone.  
Tuesday, March 20, Lewes.  
Monday, March 26, Kingston.

WESTERN.

*Erle and Crowder, JJ.*

Wednesday, Feb. 28, Winchester.  
Wednesday, March 7, Salisbury.  
Monday, March 12, Dorchester.  
Thursday, March 15, Exeter and City.  
Thursday, March 22, Bodmin.  
Wednesday, March 28, Taunton.

NORTH WALES.

*Williams, J.*

Tuesday, March 13, Welchpool.  
Friday, March 16, Bala.  
Monday, March 19, Carnarvon.  
Thursday, March 22, Beaumaris.  
Saturday, March 24, Ruthin.  
Wednesday, March 28, Mold.  
Saturday, March 31, Chester and City.

SOUTH WALES.

*Crompton, J.*

Thursday, March 1, Cardigan.

Wednesday, March 5, Haverfordwest and Town.

Thursday, March 8, Carmarthen.  
Wednesday, March 14, Swansea.  
Friday, March 23, Brecon.  
Thursday, March 29, Presteign.  
Saturday, March 31, Chester and City.

PROCEEDINGS IN PARLIAMENT  
RELATING TO THE LAW.

House of Lords.

Purchaser's Protection against Judgments—Lord St. Leonards. For 2nd reading, Feb. 9.  
Bills of Exchange—Lord Brougham. *Passed.*  
Speedy Trial of Offenders—Lord Brougham. For 2nd reading.  
Cathedral Appointments. *Passed.*

House of Commons.

Public Health—Sir B. Hall. For 2nd reading, Feb. 12.  
Common Law Procedure (Ireland). In Committee.  
Episcopal and Capitular Estates. For 2nd reading, Feb. 21.  
To Amend the Law of Partnership—Mr. Cardwell, Feb. 5.  
Bills of Exchange and Promissory Notes—Mr. Keating. For 2nd reading, Feb. 14.  
Bills of Exchange Registration. For 2nd reading.  
Judgments' Execution. For 2nd reading, Feb. 15.  
Law of Mortmain Amendment—Mr. Atherton. Feb. 13.  
Passengers by Sea Regulation—Mr. Peel. For 2nd reading.  
Metropolitan Local Management—Sir B. Hall, Feb. 9.  
Education—Sir J. Pakington, Feb. 15.  
Real Estates—Mr. Locke King, Feb. 15.  
Personal Estates—Mr. Locke King.

LEGAL OBITUARY.

THIS List comprises the names of Barristers and Solicitors, who have died since our former Obituary, vol. 48, pp. 484, 504.

The names marked thus (\*) were Members of the Incorporated Law Society:

\**Allen*, William Henry, Solicitor, of 1, Clifford's Inn and Brook House, Lewisham, aged 71. He was principal of the Honourable Society of Clifford's Inn, and was admitted on the Roll Easter Term, 1826. Died October 20, 1854.

*Austen*, Henry E., of 7, New Square, Lincoln's Inn, Barrister-at-Law. He was called

to the Bar at the Inner Temple, November 18, 1836. Died October 21, 1854.

*Barrs*, Edward, Solicitor, of Edgbaston, near Birmingham, aged 45. Admitted on the Roll Trinity Term, 1842. Died December 29, 1854.

*Bernal*, Ralph, Barrister-at-Law. He was called to the Bar at Lincoln's Inn, February 8, 1810, and was first returned to Parliament in 1818, for Lincoln. He was elected for Rochester in 1820, for Weymouth and Melcombe Regis in 1841, and again for Rochester in 1847. He received the appointment of Chairman of Committees of the whole House in 1830, and held the office for 20 years. Died August 26, 1854.

*Berrey*, John Alexander, one of the Clerks of Records and Writs. Died January 3, 1855.

*Briscoe*, William, Solicitor, of Bath. Admitted on the Roll Easter Term, 1832. Died January 31, 1855.

*Brodie*, Peter Bellinger, of 49, Lincoln's Inn Fields, Barrister-at-Law, aged 76. He was called to the Bar at the Inner Temple May 5, 1815. Died September 8, 1854.

*Croft*, John, Solicitor, of 3, Basinghall Street, City (firm Stanning and Croft). Admitted on the Roll Michaelmas Term, 1846. Died September 24, 1854.

*Cuninghame*, John, late one of the Lords of the Court of Sessions, aged 72. He was called to the Scottish Bar in 1807, was appointed Solicitor-General in 1837, and a Judge of the Supreme Court in 1837, and resigned his seat in May, 1853. Died November, 1854.

*Eden*, Thomas, Solicitor, of 3, Salisbury Street Strand, and Alpha Cottage, Chiswick and Turnham Green. Admitted on the Roll Easter Term, 1832. Died September 18, 1854.

*Faircloth*, William Wickham, Solicitor, of St. Albans. Admitted on the Roll Trinity Term 1829. Died September 27, 1854.

*Fox*, Henry Burton, Solicitor, of Bridport, Dorsetshire, aged 33. Clerk to Guardians of the Union and the County Court. Admitted on the Roll Trinity Term, 1844. Died September 22, 1854.

*Fuller*, Henry, late Attorney-General of the Island of Trinidad, aged 73. Died September 23, 1854.

*Goold*, Wyndham, Barrister-at-Law, aged 39. He was called to the Irish Bar in 1837, and was returned to Parliament for Limerick in December, 1850. Died November 27, 1854.

*Gosset*, Montague, Solicitor, of 4, Coleman Street, City, aged 62. Admitted on the Roll Hilary Term, 1840. Died October 21, 1854.

*Greenoay*, Kelygne, Solicitor, of Warwick, aged 80. He was admitted on the Roll in 1795, and retired from practice in 1833. He was High Sheriff of the county in 1841, and twice Mayor of Warwick. Died October 8, 1854.

*Griffith*, William, Barrister-at-Law. He was called to the Bar at the Inner Temple, May 12, 1820. Died September 30, 1854.

*Haines*, James, Solicitor, of Faringdon,

Berkshire, aged 65. Admitted on the Roll Easter Term, 1818. Died September 28, 1854.

*Hall*, Frederick James, of Brighton, Sussex, Barrister-at-Law. He was called to the Bar at the Inner Temple, June 29, 1827. Died October 19, 1854.

*Herring*, Oliver, of Heybridge Hall, Essex, Barrister-at-Law, aged 86. He was called to the Bar at Lincoln's Inn, January 29, 1791. Died November 5, 1854.

*Hiade*, Henry, Solicitor, of Woodend, near Sheffield, aged 45 (firm Smith & Hinde). Admitted on the Roll Trinity Term, 1831. Died September 27, 1854.

*Holmes*, Henry, Solicitor, of Romsey, aged 70. For many years Town Clerk. Admitted on the Roll Michaelmas Term, 1805. Died September 22, 1854.

*Jee*, Joseph, of 3, Churchyard Court, Temple, and Hartshill, Warwickshire, Barrister-at-Law, aged 33. He was called to the Bar at the Middle Temple, November 20, 1846. Died November 9, 1854.

*Knox*, Viceamus, of 8, Stratford Place, Oxford Street, Barrister-at-Law, Benchet of the Inner Temple, and Recorder of Saffron Walden. He was called to the Bar at the Inner Temple, February 3, 1804. Died Jan. 25, 1855.

*Lewis*, William Stone, of Wood Hall, Shenley, Hertfordshire, Barrister-at-Law, and late Actuary of the Rock Life Assurance Company. Called to the Bar at Gray's Inn, April 26, 1815. Died September 18, 1854.

*Mears*, John, Solicitor, of Bagshot, Surrey, aged 67. Clerk to the Magistrates. Admitted on the Roll Michaelmas Term, 1812. Died November 14, 1854.

*Middleton*, James, Solicitor, of 7, Furnival's Inn, Holborn, aged 51. Admitted on the Roll Easter Term, 1827. Died November 10, 1854.

*Mills*, Austen Treffry, Solicitor, of Gosport, aged 36. Admitted on the Roll Michaelmas Term, 1842. Died December 25, 1854.

*Musgrave*, William, First Puisne Judge of the Supreme Court at the Cape of Good Hope. Called to the Bar at the Inner Temple, June 23, 1814. Died October 6, 1854.

*Parkinson*, John, Solicitor, of 66, Lincoln's Inn Fields (firm Farrer & Co.), aged 75. Admitted on the Roll Hilary Term, 1802. Died January 30, 1855.

*Phillimore*, Joseph, D.C.L., Regius Professor of Civil Law in the University of Oxford, and Chancellor of the Dioceses of Worcester, Oxford, and Bristol, aged 77. He was also Commissary to the Dean and Chapter of St. Paul's and to the Dean and Chapter of Westminster, Judge of the Cinque Ports, her Majesty's Advocate in her office of Admiralty, and Judge of the Consistory Court of Gloucester. Admitted to the College of Doctors of Law, November 21, 1804. Died February 1, 1855.

*Robertson*, Hon. Patrick, one of the Judges of the Court of Session, aged 60. He was called to the Scottish Bar in 1815, was elected

dean of the faculty in 1842, and a Lord of Session in November, 1843. Died January 10, 1855.

*Rutherford*, Right Hon. Andrew, one of the Judges of the Court of Session and a Privy Councillor, aged 62. He was called to the Scottish Bar in 1812, was appointed Solicitor-General in 1837 and Lord Advocate in 1839, and was elevated to the Bench in 1851. Died December 13, 1854.

*Shepherd*, Charles, Solicitor, of Tenterden, Kent. Clerk to the Union. Admitted on the Roll Trinity Term, 1828. Died September 10, 1854.

*Stevenson*, Anthony, Solicitor, of 1, Victoria Street, Holborn Bridge (firm *Stevenson and Ley*). Admitted on the Roll Michaelmas Term, 1848. Died February, 1855.

*Taylor*, John Hutton, of Woburn Square, Barrister-at-Law, aged 27. Called to the Bar at Lincoln's Inn, May 1, 1854. Died December 15, 1854.

*Townson*, Richard, Solicitor, of Moorgate Street Chambers, and 6, Welclose Square, aged 66. For many years Vestry Clerk of St. George's in the East, Middlesex (firm, *Morris, Stone, Townson, and Morris*). Admitted on the Roll Trinity Term, 1838. Died November 13, 1854.

## INSOLVENT DEBTORS' COURT.

### NEW RULE ON COMMITMENTS BY COUNTY COURTS.

February 7, 1855.

MR. COMMISSIONER MURPHY stated that the three Commissioners had come to a determination to discharge parties who had the protection of this Court and were committed by County Courts. The Commissioners would not interfere on *unsatisfied* judgments under the 1 & 2 Vict., as decided by the case of "*Abney and Dale*," but in cases under the Protection Act they would continue to act when parties were committed, and would do so until a Superior Court gave a contrary decision.

## NOTES OF THE WEEK.

### NEW ADMINISTRATION.

THE few changes in the members of the Government have not affected the position of the Law part of the administration. Lord Cranworth remains Lord Chancellor, and Sir A. Cockburn and Sir R. Bethell continue in their respective offices of Attorney and Solicitor-General. We have to record only that Lord Palmerston is the Prime Minister, and Mr. Sidney Herbert Home Secretary.

### BILLS OF EXCHANGE BILLS.

Lord Brougham's "*Summary Diligence*" Bill for the Registration of Dishonoured Bills

of Exchange, has passed the House of Lords and been read a first time in the Commons.

Mr. Keating has brought in his Bill "to facilitate the Remedies on Bills of Exchange and Promissory Notes by the prevention of frivolous or fictitious Defences to Actions thereon." The defendant, it is proposed, shall, in actions commenced according to the special form of writ given in the Bill, obtain leave of the Court or a Judge to appear and plead;—without which permission, the plaintiff may sign final judgment in eight days.

### UNOPPOSED PETITIONS IN CHANCERY.

Vice-Chancellor *Kindersley*, at the rising of the Court, on the 30th January, said, that a practice had existed, and which had been considered a convenient one, of allowing a certain number of unopposed petitions to be placed in the paper any morning, the papers having been left one clear day previously; but it was found that, although such a course did tend in some measure to relieve the general paper, yet that it caused so much inconvenience in other ways that for the future it would not be continued.

### LAW APPOINTMENTS.

THE Queen has been pleased to grant the place of one of the Lords of Session in Scotland to *Thomas Mackenzie*, Esq., her Majesty's Solicitor-General for Scotland, in the room of *Patrick Robertson*, Esq., deceased.

Her Majesty has also been pleased to appoint *Valentine Fleming*, Esq., to be Chief Justice of the colony of Van Diemen's Land.

Mr. *William Stephen Daglish*, Solicitor, of Newcastle-on-Tyne, has been appointed a Commissioner to administer Oaths in the High Court of Admiralty.

Mr. *John Twist Taylor*, of Windermere, has been appointed Clerk to the Burial Board of Bowness.

The Recorder of Newcastle-on-Tyne has appointed Mr. *William Lockey Harle*, Solicitor, to be Deputy Recorder.

Mr. *Thomas Henry Field* has been appointed Clerk to the Burial Board of Alverstoke, Hants.

The Queen has been pleased to appoint *Sydney Smith Bell*, Esq., to be first Puisne Judge, and *John Watts Ebdon*, Esq., to be second Puisne Judge of the Supreme Court of the Colony of the Cape of Good Hope; *James Lushington Wildman*, Esq., to be Secretary Registrar, and Clerk of the Council for the Island of Grenada; and *Francis Smith*, jun., Esq., to be Attorney-General for the Colony of Van Diemen's Land.

Her Majesty has also been pleased to appoint *Arthur Briggs*, Esq., Barrister-at-Law, to be a Police Magistrate and Justice of the Peace for the borough of Brighton.

Mr. *Edward Lawton Hannam* was on the 7th February admitted a Proctor of the Arches' Court by virtue of a rescript from his Grace the Archbishop of Canterbury.

RECENT DECISIONS IN THE SUPERIOR COURTS.

**Lord Chancellor.**

*In re Stocker's Patent.* Jan. 31, 1855.

PATENT.—EXTENSION OF TIME FOR SEALING.—MISTAKE.

*Application granted for an extension of the time for sealing a patent, where a mistake had been made in paying the fees for another patent of the same date.*

THIS was an application for an order extending the time for sealing this patent. It appeared that a mistake had been made in paying the fees on another patent of the same date.

*Amphlett* in support.

The Lord Chancellor granted the application.

*In re Sea Fire and Life Assurance Company.*  
Feb. 3, 1855.

ENROLLING DECREE AFTER SIX MONTHS.—PRACTICE.

*Order for leave to the official manager to enrol the decree of the Lords Justices, for the purpose of an appeal to the House of Lords, notwithstanding the six months for enrolment under the 2nd Order of August 7, 1852, had elapsed.*

*But semble, that the application should have been made to the Lords Justices.*

THIS was an application for leave to the official manager of the above company to enrol the decree of the Lords Justices for the purpose of an appeal to the House of Lords, notwithstanding that the six months limited by the 2nd Order of August 7, 1852, had expired.

*Bacon and Freeling* in support, referred to the 2nd Order of August 7, 1852, which provides, that "all decrees and orders, and all dismissions pronounced or made in any cause, claim, or matter in this Court which shall be enrolled, shall be so enrolled within six calendar months after the same shall be so pronounced or made respectively, and not at any time after without special leave of the Court, such leave to be obtained in manner next hereinafter obtained;" and to Order 6, which directs that "the Lord Chancellor, either sitting alone, or with the Lords Justices, or either of them, shall be at liberty, where it shall appear to him, under the peculiar circumstances of the case, to be just and expedient, to enlarge the periods hereinbefore appointed for a rehearing, or an appeal, or for an enrolment."

*Daniel and H. Stevens* contra.

The Lord Chancellor said, that the word "Court" in the 2nd Order, meant the Court before which the hearing took place. But under the circumstance that the delay would be injurious, the order would be made on the present motion—the costs being paid by the official manager, and the other side consenting.

**Vice-Chancellor Stuart.**

*Tickner v. Smith and another.* Feb. 1, 1855:  
SUIT AGAINST EXECUTORS FOR ACCOUNT.—LACHES IN REALISING ASSETS.—COSTS.

*A testatrix died in December, 1846, and although the executors under her will had made some payments on account to legatees, no steps had been taken to realise the principal part of the assets for upwards of six years: Held, that they were liable to the costs of a suit by the legatees for an account.*

It appeared that the testatrix, Mrs. Hall, died in December, 1846, having by her will appointed the defendants her executors. The executors had made some payments on account to the legatees, but had taken no steps to realise the assets, and the matter had been allowed to stand over for upwards of six years. The plaintiffs, who were legatees, now filed this bill for an account.

*Malias and Woodroffe* for the plaintiffs; *Elmsley and Morris* for the defendants.

The Vice-Chancellor said, that the defendants admitted having taken no steps to realise the assets, the one stating he thought the other attended to the business, and the other that he had not divided the assets until the whole were realised. The moneys outstanding must be paid into Court, and the defendants pay the costs of the suit.

**Court of Queen's Bench.**

*In re Carter v. Smith.* Jan. 30, 1855.

COUNTY COURTS' ACT.—JURISDICTION OF JUDGE AS TO NEW TRIAL OF PLAINT.

*Held, that the 141st rule of practice of the County Courts, requiring seven days' notice to be given of the intention to apply for a new trial, does not restrict the general power given under s. 89 of the 9 & 10 Vict. c. 95, to the Judge to grant a new trial in any case whatever, if he should think fit, and on such terms as he might think reasonable.*

*A rule nisi for a prohibition was therefore discharged, without costs, where the Judge had intimated his intention of granting a new trial at the next Court, if he had the power, where the seven days' notice had not been given.*

This was a rule nisi for a prohibition on the Judge of the Oxfordshire County Court against further proceeding in this plaint. It appeared that the plaintiff had obtained a verdict, but that at the next Court the defendant had applied for a new trial, which the Judge intimated he would grant if he had power,—the plaintiff objecting, that the defendant had not given the seven days' notice required by rule 141.<sup>1</sup>

<sup>1</sup> Which directs, that "an application for a new trial or to set aside proceedings may be

*T. O. Griffiths* showed cause; *Cripps* in support.

The Court said, that the rule of practice was only discretionary, and did not restrict the general power given to the Judge by s. 89<sup>2</sup> of the 9 & 10 Vict. c. 95, to grant a new trial in any case, and the rule for a prohibition must be discharged, but without costs.

#### Court of Common Pleas.

*Jenkins v. Betham.* Nov. 23, 1854; Jan. 31, 1855.

**SURVEYOR, ACTION AGAINST FOR NEGLIGENCE IN VALUING DILAPIDATIONS TO RECTORY HOUSE.**

*The surveyor employed by a rector on being induced to value the dilapidations to the rectory house, had not proceeded in accordance with the rule laid down in Wise v. Metcalfe, 10 B. & C. 299: 5 M. & R. 235.*

*Held, that the rector was entitled to recover damages against him, as he was bound to know the general rule in regard to such valuations, although not to have a technical knowledge of the law.*

It appeared that upon the plaintiff being induced to a rectory he had employed the defendant, a surveyor, to value the dilapidations to the rectory house, but that he was dissatisfied with the result of his survey and had brought this action to recover damages for the loss he had sustained by his not using proper skill and knowledge of the law in making such valuation. On the trial before *Parke, B.*, the defendant obtained a verdict; and this rule had been obtained for a new trial.

*Mellor and Hayes* showed cause; *Macaulay* and *Field* in support.

*Cur. ad. vult.*

The Court said, that it was clear the defendant had not supplied accurate skill and knowledge of the law, inasmuch as he had not acted on the rule laid down in *Wise v. Metcalfe*, 10 B. & C. 299; 5 M. & R. 235; and although he was not bound to supply a technical knowledge of the

made and determined on the day of hearing, if both parties are present, or may be made at the first Court held next after the expiration of 12 clear days from such day of hearing, and the party intending to make such application shall, seven clear days before the holding of such Court, deliver a notice in writing, signed by himself, his attorney, or agent, stating the grounds of his intended application, and also the Court at which such application is proposed to be made, to the clerk at his office, and give a similar notice to the opposite party," &c.

<sup>2</sup> Which enacts, that "every order and judgment of any Court holden under this Act, except as herein provided, shall be final and conclusive between the parties, but the Judge shall," "in every case whatever have the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings."

law, he should have known the general rule of law in regard to valuations of this kind. It appeared by the evidence that he had not followed the correct rule, and the omission had resulted in loss to the plaintiff. The rule would therefore be made absolute on the ground that the verdict was against evidence.

#### Court of Exchequer.

*Osborn v. London Dock Company.* Jan. 29, 1855.

**COMMON LAW PROCEDURE ACT, 1854—LEAVE TO EXHIBIT INTERROGATORIES.**

*Leave given to exhibit interrogatories under the 17 & 18 Vict. c. 125, s. 51, on behalf of defendants, although it was suggested that they would tend to show the plaintiff guilty of felony or conspiracy; and held that the plaintiff must, in reply to any interrogatory having such tendency claim his personal privilege.*

THIS was a motion on behalf of the defendants under the 17 & 18 Vict. c. 125, s. 51,<sup>1</sup> for leave to exhibit interrogatories to the plaintiff in this action which was brought to recover 27 pipes of port wine deposited with the defendants. It appeared that the plaintiff had purchased wine at one of the defendants' rummage sales, and that the wine had by some means or other been changed, and the casks contained good wine.

*Willes* in support.

*Prentice*, contra, on the ground that the tendency of the interrogatories was to show the plaintiff was guilty of felony or of conspiracy, and also that the defendants intended to call him on the trial.

The Court said, that if any particular question tended to criminate the plaintiff, he should himself claim his personal privilege, but that the interrogatories must be allowed to be exhibited.

*Evans v. Robinson.* Feb. 5, 1855.

**ACTION FOR CRIM. CON.—NEW TRIAL ALTHOUGH VERDICT FOR DEFENDANT.**

*A rule was made absolute for the new trial of an action for crim. con., notwithstanding*

<sup>1</sup> Which enacts, that "in all causes in any of the Superior Courts, by order of the Court or a Judge, the plaintiff may, with the declaration, and the defendant may with the plea, or either of them by leave of the Court or a Judge, may at any other time, deliver to the opposite party or his attorney (provided such party, if not a body corporate, would be liable to be called and examined as a witness upon such matter) interrogatories in writing upon any matter as to which discovery may be sought, and require such party, or in the case of a body corporate any of the officers of such body corporate, within 10 days to answer the questions in writing by affidavit, to be sworn and filed in the ordinary way."

the verdict on the first trial was for the defendant, the costs to abide the event.

THIS was a rule nisi to set aside the verdict for the defendant, and for a new trial of this action, which was brought against the defendant, to recover damages for crim. con. with the plaintiff's wife. On the trial before *Crowder, J.*, at Liverpool, the defendant obtained a verdict, and this rule had been obtained on the ground of surprise, and of the verdict being against the weight of evidence.

*Watson and Rao* showed cause.

The Court (without calling on *Attorney-General, Knowles, Wilkins, S. L.*, and *Aspland* in support) said, that the action was not merely for damages, but involved the question whether the plaintiff was forced to retain his wife or not, as a divorce *à menâ et thoro* could not be obtained where there was a verdict for the defendant. Without going into the question of the evidence, the rule would therefore be made absolute for a new trial—the costs to abide the event.

#### Crown Cases Reserved.

*Regina v. Luck and others.* Feb. 3, 1855.

INDICTMENT.—RIGHT OF COUNSEL FOR PRISONER TO CROSS-EXAMINE AND TO REPLY.

On an indictment against three prisoners they appeared by separate counsel, and one being acquitted on the trial, examined on behalf of L. criminated B.: Held, that B.'s counsel, although he had already addressed the jury on behalf of his client, was entitled to cross-examine the witness and to reply on such evidence.

It appeared that on an indictment against three persons, they were defended by separate counsel, and that one of them, named Cox, having been acquitted, was called to give evidence on behalf of Luck, and in his evidence criminated Burdett, whose counsel thereupon claimed the right of cross-examination, and of reply upon such evidence, notwithstanding he had already addressed the jury on behalf of his client. The Chairman of the Sessions disallowed the claim, but permitted the prisoner to put questions to the witness through the Court. Upon Burdett's conviction he was admitted to bail, subject to this case.

*Roberts* for the prisoner; *Markham* in support of the conviction.

The Court said, that as the witness had criminated the prisoner, his counsel had the right contended for, but it was to be understood that he would not have had the right if the witness had not criminated him. The conviction would therefore be reversed.

### ANALYTICAL DIGEST OF CASES,

#### SELECTED AND CLASSIFIED.

#### Bribe Council Appeals.

##### APPEAL.

*Leave to.—Appealable value.—Security for compensation and costs.*—Where this Court grants leave to appeal, under the general jurisdiction of the Queen in Council, it will impose such terms upon the party applying as the special circumstances of the case require.

Appeal admitted from an order confirming the report of Commissioners in a partition suit, although the appealable value was under 10,000 rupees, the amount prescribed by the order in Council of the 10th of April, 1838. The petitioner (the plaintiff) had offered to compensate the defendant, if the report of the Commissioners were varied. The Judicial Committee, in granting leave to appeal, put the petitioner upon terms of lodging in the Council Office, within four months, a certificate of recognizance to the Queen, in the sum of 1,500*l.*, for such compensation and costs as might be awarded. *In re Sibnarain Ghose*, 8 Moore, P.C., 276.

##### BANKRUPT.

See *Canada*.

##### BARBADOES.

*Real estate in.—Marshalling assets.—Devise.*—S. was seised of real estate in the island of Barbadoes. S. was indebted to T. in a sum se-

cured by S.'s bond, and at the death of T., in the lifetime of S., such bond debt was due. T. by his will appointed S. his executor, who proved and acted in the trusts thereof. S., after T.'s death, regularly entered up his books, debiting himself not only with the principal but the interest of this debt annually as it accrued. In this state of affairs S. died, being at the time indebted to B., H., & Co., of Liverpool, and having by his will devised his real estates in Barbadoes to trustees for sale, subject to his debts, and directed them to consign the crops and such such real estates to B., H., & Co., until the several debts due by him to them should be paid, in manner therein described: Held (affirming the judgment of the Court of Barbadoes, in a creditor's suit, in marshalling the assets of S.)

1st. That the fact of T. appointing S. his executor, did not in equity change the character of the debt due to T., and that such debt remained a specialty debt, as though a stranger had been appointed executor, and retained its priority.

2nd. That the Statute 5 Geo. 2, c. 7, s. 4, made real estates in the West Indies legal assets, in such a way as to give the same priority to specialty creditors against real estate, as they previously had against personal estate, and that it was not competent to a testator by devise, to change the legal distribution of his

assets, by directing a distribution equally among his creditors.

*Quære*, whether the direction in the will of *S.*, that the produce of the real estates should be consigned to *B., H., & Co.*, in Liverpool, until the debt due by him to them should be paid off and discharged, created a lien by *S.* in *B., H., & Co.*'s favour upon the proceeds of those estates, directed by his will to be sold, for any debt which, at the time of the death of *S.*, might be owing to *B., H., & Co.*? Such point not having been raised in the Court below by the exceptions to the Master's report, or at the hearing of the exceptions, the Judicial Committee, as a Court of the last resort, declined to entertain the question.

The case of *Charlton v. Wright*, 12 Sim. 274, which ruled, that real estates in the West Indies might, since the passing of the 5 Geo. 2, c. 7, s. 4, be devised, so as to make them equitable assets, observed upon and overruled.

*Turner v. Cox*, 8 Moore, C. P. 288.

#### BILL OF EXCHANGE.

1. *Restrictive indorsement.*—Action by subsequent indorsee.—Bill of exchange drawn by *M.*, under the name of *M. and Co.*, upon and accepted by *J. and Co.*, payable six months after sight to order of *M.*, and by *M.* indorsed to *B.*, and by *B.* indorsed to *C.*, "value in account with the Oriental Bank," and by *C.* indorsed to *S.*

Action by *S.* as indorsee, against *M.* as drawer, upon the bill being dishonoured. Demurrer that the indorsement preceding that to *S.* was restrictive. *Held* by the Supreme Court of Hong Kong, that there was nothing upon the indorsement by *B.* to preclude *C.*, the restrictive indorsee, from making an assignment of the bill, so as to give the subsequent indorsee a right of action for the benefit of the restraining indorser, or *cestui que trust*, as the case may be. Such decision on appeal, affirmed by the Judicial Committee of the Privy Council. *Murrow v. Stewart*, 8 Moore, P. C. 267.

2. *Remitted for special purpose.*—Recovery of from purchaser.—Where bills of exchange are remitted for sale, and the proceeds directed to be applied to a specific purpose, the property in the bills remains in the remitter until the purpose for which they were remitted is satisfied. And, where the money realised by the sale was wrongfully applied by the agent, it was ruled by the Judicial Committee (affirming the judgment of the Court at Calcutta) that the remitter was entitled to recover the value of the bills in assumption, upon an *indebitatus* count, from the purchaser of them, who had notice of the purpose for which they were remitted, and the misapplication of the proceeds by the agent. *Muttyloll Seal v. Dent*, 8 Moore, P. C. 319.

#### CANADA.

*Construction of ordinance.*—*Bankrupt.*—*Incompetency of evidence.*—*Promissory note.*—*Verbal agreement.*—*Usury.*—The 5th section of the Canadian Ordinance, 2 Vict. c. 36, defining the description of debts that may be

proved and allowed against a bankrupt's estate, enacts, that in case the bankrupt shall be liable for any debt, in consequence of having made or indorsed any bill of exchange or promissory note before the first publication of the notice of issuing of the warrant, or in consequence of the payment by any party of any bill or note of the whole, or any part of the money secured thereby, or of the payment of any sum by any surety of the bankrupt in any contract whatsoever, although such payment in either case shall be made after such first publication, provided it be made before the making of the first dividend, such debt shall be considered, for all the purposes of that ordinance, as contracted at the time when such bill or note, or other contract, shall have been so made or indorsed, and may be proved and allowed against the estate, as if the debt had been due and payable by the bankrupt before the first publication.

In an action by *A. and Co.*, indorsees and holders of a promissory note against *B.*, the payee and indorser, *B.* pleaded that *A. and Co.* had the note by an usurious title, and that he was the indorser only for accommodation and surety. He also pleaded that a verbal agreement existed between *A. and Co.* and *C. and D.*, the makers, to withhold the enforcement of the note till a balance of a floating account was struck, and further certain pleas of compensation and extinction. To prove these pleas, *B.* called *C.* and *D.* as witnesses. *C.* and *D.* had become bankrupts since the making of the note, and had obtained their certificate. To remove any objection to their competency on the score of interest, *B.* put in: 1st, a release from them to the assignee under the bankruptcy, by which they released the assignee and estate from any allowance or percentage which they might be entitled to have from the estate; 2nd, a release by *B.* to *C.* and *D.*, from the costs of the action; and, 3rdly, their certificate of bankruptcy. No evidence was given of a dividend having been paid out of the estate to *C.* and *D.*

*Held*, 1st, that the releases and certificate did not make them competent witnesses, as they had an interest to defeat the action; for, if *B.* had to pay the amount of the note subsequently to the making of the 1st dividend, he was precluded by the Canadian Ordinance, 2 Vict. c. 36, s. 5, from proving the debt under the Commission, and then as a damaged surety he had a right of action against *C.* and *D.*

2ndly, that the onus was upon *B.* to prove that no dividend of *C.* and *D.*'s estate, under the Commission, had been declared.

*Held* also that the plea of a verbal agreement qualifying the written contract expressed in the note, was bad in law.

*A. and Co.* were general merchants, bankers, and commission agents at Montreal, and their course of trade consisted principally in procuring and advancing to colonial dealers, called "forwarders," supplies of goods, cash, and negotiable securities, as required from time

time by their customers, to support them in their dealings, returns being made by such forwarders, after some interval of time, at their convenience, in the freight of produce from the upper country, and in the payment of cash and negotiable securities. In the accounts they kept with C. and D. there was kept a column on both sides for interest, from the time the payment was made or due; and, at the periodical close of the account, A. and Co. made a charge for their commission, calculated in the year 1839, upon the balance then due, and after that time upon the cash advances. *Held*, that the pleas of usury were not proved, and that it did not appear from the accounts that the charge for commission was a cloak for usury, but was to be treated as a *bond fide* compensation for the labour and inconvenience in conducting such business. *Pollok v. Bradbury*, 8 Moore, P.C. 227.

## CEYLON.

1. *Construction of charter of justice.—Forfeiture of recognisances.*—"Proceeding."—By the 23rd clause of the Charter of Justice of Ceylon (1833) district Courts were established with certain powers, such district Courts consisting of a Judge and three assessors, and, by the 36th clause of the charter, an appeal is given from such Courts to the Supreme Court in all matters of law and fact.

By Ordinance (for the establishment of police courts), No. 11, of 1843, sec. 14, of Ceylon, the Supreme Court has full power and authority to review the proceedings of the police courts, and, if necessary, to set aside or correct the same, for incompetency of the Court in respect of excess of jurisdiction, or for gross irregularity in the proceedings, &c.

By the Ordinance, No. 11, of 1844, sec. 7, power is given to a district Judge or police magistrate to enforce any recognizance taken before a justice of the peace, upon proof of its forfeiture.

*Held* by the Judicial Committee (affirming the decision of the Supreme Court of Ceylon) that a decision of a police magistrate, under sec. 7 of the Ordinance, No. 11, of 1844, declaring the recognizance of sureties forfeited, in default of appearance of the principal party, charged criminally, was a "proceeding" within sec. 14 of the Ordinance, No. 11, of 1843, and the proper subject of review by the Supreme Court. *Regina v. Price*, 8 Moore, P.C. 203.

2. *Notice on party out on bail to appear.*—"Gross irregularity."—A. went out on bail upon a criminal charge. On the 7th of Aug., 1851, a notice requiring A. to appear "forthwith" before the Supreme Court at Colombo, was issued. The notice was left on the 12th of the same month at the last place of abode of A., who was not to be found, and, on the 13th, the day after, the Court was held, and, as A. when called did not appear, his recognizance was declared to be forfeited. The sureties were then proceeded against, and the magistrate, under sec. 7 of the Ordinance, No. 11 of 1844, declared that their recognisances were

forfeited. The Supreme Court, on review, reversed the decision.

Upon appeal, the Judicial Committee sustained this decision, holding that it was a "gross irregularity" within the meaning of section 14 of Ordinance No. 11 of 1843; for, as it was a case against sureties, it must be clearly shown that the conditions on which their liability depended had been literally complied with, which had not been done, as the notice was imperfect, and the proceedings under it irregular; A. being entitled to a distinct and intelligible notice of the place and time of holding of the Court. *Regina v. Price*, 8 Moore, P. C. 203.

## CHURCH RATE.

*Repairs, borrowing for.*—*Notice of purposes of vestry meeting.*—*Costs.*—It is essential to the validity of a church rate, that the notice required by the Statute 58 Geo. 3, c. 69, s. 1, summoning the parishioners together, should clearly apprise them of the special purpose for which the vestry meeting is to be called.

A notice of a vestry meeting was issued by the churchwardens, to levy a rate for the purpose of defraying the expenses incurred by the churchwardens in repairing and restoring the parish church, rendered necessary by reason of a late fire; or otherwise, to consider the expediency of borrowing the amount of such expenses on the credit and security of the churchrates pursuant to the provisions of the Statutes 58 Geo. 3, c. 45, or of the 59 Geo. c. 134, and in case it should be considered expedient to borrow the amount of such expenses, to authorise the churchwardens to take the necessary proceedings for that purpose, and to do all matters incident thereto. At the meeting held in pursuance of such notice, it was resolved:—first, that the churchwardens should be authorised to borrow upon security of the church rates, in payment of the expenses incurred in restoring the church, to be paid by annual instalments of not less than one-tenth of the loan with interest; secondly, that in payment of the first instalment of the loan, and the ordinary expenses of the parish church, a rate should be granted to the churchwardens. In pursuance of this second resolution, a rate was made to pay the first instalment of the loan, and also for the necessary and incidental expenses of the church.

Upon appeal, held (reversing the judgment of the Court below, admitting a libel in a cause of subtraction of church rate) that the rate was invalid, as the notice was insufficient, and not in compliance with the provisions of the statute, 58 Geo. 3, c. 69, s. 1. For although there was sufficient authority by the notice for the 1st resolution, yet that the notice was insufficient, and fatal to the 2nd resolution for making a rate for necessary and incidental expenses of the church.

In reversing such judgment, the Judicial Committee gave the appellant the costs incurred in the Court below, but not of appeal. *Smith v. Deighton*, 8 Moore, P. C. 179.



## COSTS.

See *Church Rate*.

## EVIDENCE.

See *Patent*, 4.

## EXTENSION OF PATENT.

See *Patent*.

## "FORTHWITH."

Meaning in notice to party charged criminally to appear.—The word "forthwith" in a notice to a party charged criminally and out on bail, to appear, on pain of forfeiting his recognisance, means "within a reasonable time from the service," and not from the date of the notice. *Regina v. Price*, 8 Moore, P. C. 204.

Cases cited in the judgment: *Tennant v. Bell*, 9 Q. B. 684; *Spenceley v. Robinson*, 3 Bar. & Cr. 658; *Hyde v. Watts*, 12 M. & W. 254.

## "GROSS IRREGULARITY."

See *Ceylon*, 2.

## JAMAICA.

Construction of 8 Vict. c. 48.—*Lien of legatee on real estate as judgment creditor*.—By the Jamaica Act, 8 Vict. c. 48, entitled "An Act to declare judgments a lien upon land, to abolish arrest in certain cases, and for other purposes," an order made by the Court of Chancery in Jamaica, in an administration suit, for the payment of a legacy, declared due from the testator's estate, has, when duly registered, the force and effect of a judgment at law, and constitutes the legatee a judgment creditor, so as to entitle him to the writ of *venditioni expositio*. *Balfour v. Watt*, 8 Moore, P. C. 190.

## LIEN ON REAL ESTATE.

See *Jamaica*.

## MARINE INSURANCE.

Time policy.—*Implied warranty of seaworthiness*.—The warranty of seaworthiness in time policy, at the commencement of the risk, is not a continuing obligation cast upon the assured while the risk is running. So held by the Judicial Committee, affirming the judgment of the Supreme Court at Calcutta, in an action brought for a total loss, by stranding, within the time of the running of the policy, after leaving an intermediate port, the defence being, that at the time of the loss the vessel was unseaworthy by reason of an insufficient crew, she having sailed from the intermediate port without sufficient hands to work the vessel, although she had a sufficient crew at the time she started for the voyage.

*Semble*, there is no implied warranty of seaworthiness in a time policy. *Jenkins v. Heycock*, 8 Moore, P. C. 351.

## PATENT.

1. *Extension, notwithstanding lis pendens as to validity*.—The circumstance of there being *lis pendens*, respecting the validity of the letters patent, is no objection to the grant of an extension of the original letters patent. *In re Heath's Patent*, 8 Moore, P. C. 217.

2. *Extension where meritorious, and extensive litigation*.—Term of letters patent extended for seven years on the ground of the meritorious nature of the invention, and the extensive litigation the patentee had been put to in protecting his patent rights which had prevented any remuneration. *In re Heath's Patent*, 8 Moore, P. C. 217.

2. *Practice on Order in Council for extension*.—Form of Order in Council, pursuant to the Statute 15 & 16 Vict. c. 83, s. 40, directing the Lord Chancellor to make and seal new letters patent, upon the report of the Judicial Committee recommending an extension of the term, under the provisions of the Statutes 5 & 6 Vict. c. 83, and 7 & 8 Vict. c. 69. *In re Heath's Patent*, 8 Moore, P. C. 217.

4. *Examination of administratrix of patents as to loss to estate*.—No accounts were kept by the deceased patentee of the expenditure or receipts, on account of his patent. Upon its appearing that his estate was of little value (his effects being sworn for administration under 100*l.*), the petitioner, the administratrix of the patentee, on the allegation that there had been no profits, but considerable loss, to such estate, was examined to prove that fact. *In re Heath's Patent*, 8 Moore, P. C. 217.

5. *Duration of, where foreign patent*.—The provisions of section 25 of the Statute 15 & 16 Vict. c. 83, enacting that letters patent obtained in the United Kingdom for patented foreign inventions are not to continue in force after the expiration of the foreign patent, apply only to patents granted in the United Kingdom subsequent to the passing of that Statute. *In re Bodmer's Patent*, 8 Moore, P. C. 282.

6. *Extension of term, where subsequent patents*.—Where letters patent (for improvements in machinery, tools, or apparatus for cutting, planing, turning, drilling, and rolling metals) embraced several subjects, one only of which, viz., the rolling of metals, had been worked out, and that part of the patent was affected by subsequent patented improvements by the same patentee, and could not be effectually used without such subsequent improvements; the Judicial Committee, before recommending an extension of the term of the first patent, put the petitioner upon terms of disclaiming all the parts of the original patent not worked out and restricted the prolongation to the unexpired term of the subsequent patents. *In re Bodmer's Patent*, 8 Moore, P. C. 282.

## PRACTICE.

See *Appeal*; *Patent*, 3.

## "PROCEEDING."

See *Ceylon*, 1.

## PROMISSORY NOTE.

See *Canada*.

## REPAIR OF CHURCH.

See *Church Rate*.

## USURY.

See *Canada*.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

— Bill attended at your service. — *Shakespeare.*

SATURDAY, FEBRUARY 17, 1855.

### SUMMARY BILLS OF EXCHANGE BILL.

AFTER the lapse of several centuries, and after an unexampled extent of commerce has been carried on without difficulty in England, we are now called upon to supersede both ancient and modern actions at law, and to substitute a notarial protest, followed by the order of a Judge whereon a judgment may be signed and an execution issued. It may be proper to prevent a defendant from entering an appearance, and putting the plaintiff to an unnecessary expense; and it may be right to require him to satisfy a Judge that he has a good or reasonable defence. It may next be urged as not being unjust, to compel a defendant in all actions to swear to the merits of his defence, but a distinction may not unfairly be raised between bills of exchange under the signature of the acceptor, where the amount and time of payment are ascertained, and an ordinary debt, and therefore a shorter remedy may be justifiable in favour of a negotiable instrument.

But it still may be observed, that if the certainty of the written document be the ground of a summary proceeding, so may bonds and covenants, as well as bills and notes, be also entitled to speedy judgment and execution. Waiving this, however, for the present, we shall remind our readers of some points connected with the Scottish remedy, which were brought to notice in the last Session of Parliament by the Incorporated Law Society. Amongst other arguments, it was urged that the improvements which have been effected in the course of proceeding in the Common Law Courts render the new remedy proposed by the Bill unnecessary and inexpedient.

Where there is no defence to an action on a bill of exchange, judgment may be obtained in eight days. The Legislature has deemed it right to suspend execution for eight days after judgment on a writ of summons, and the consequence of this indulgence is, that comparatively few dishonoured bills are defended. The time within which such judgment may now be so obtained and execution issued is as short as is expedient, just, or necessary, before allowing a holder of a bill to seize by legal process the person or property of the parties to the bill.

The Bill will operate with great severity on the indorsers of bills of exchange, who, in case of the default of the acceptor, will be liable to execution at the expiration of six days, although they may have received no notice of the dishonour, or from the shortness of the period allowed, may not have it in their power to inquire into the points necessary to be determined before paying or resisting the demand.

It will be a great hardship on parties to a bill of exchange, who may often be in entire ignorance of the facts, or may have a perfectly good defence against the holder, —which at the moment they may be unable to substantiate, or which may depend on negative circumstances,—to throw the burden of proof on the defendant, who, according to the provisions of the present Bill, is to show by affidavit that his defence is sufficient, and also (if the Judge thinks fit) to find security for the debt and costs.

The Bill will be injurious to creditors in general, by giving a preference to the holder of a bill of exchange,—enabling him in the short time of six days to take possession under an execution of the debtor's property; and consequently the

debtor, in order to do justice to his creditors in general, and prevent such undue preference, must be driven to commit an act of bankruptcy for the purpose of securing a just and equal distribution of his assets.

The provisions of the Bill will afford means of collusion between dishonest debtors and creditors to the prejudice of *bond fide* creditors; for a debtor might obtain credit to a large amount without giving acceptances, and before the time of such credit expired, grant bills to fictitious or favoured creditors, friends, or relations, and enable them to issue execution against the whole of the property.

There is no just reason for granting to the holders of bills of exchange a better remedy for non-payment than the parties to whom bonds and covenants for the payment of money have been executed, and who in default of payment must resort to an action at law. Formerly actions on bonds were placed on a higher footing than actions on simple contract debts, inasmuch as where there was no defence, the judgment was final, and not interlocutory; but now under the Common Law Procedure Act, final judgments may be obtained in all undefended actions at the expiration of eight days.

The "summary diligence" on bills of exchange having always prevailed in Scotland, there has been no opportunity of comparing its effects with the mode of proceeding in England; and the bill transactions in Scotland being comparatively few in number, the example does not justify its adoption in England in lieu of the improved mode of proceeding in the Common Law Courts.

We conceive that it is altogether inexpedient to pass the Bill, even if no other objections could be alleged against it, because it forms but a small part only of the proposed plan of assimilating the Laws of England, Ireland, and Scotland. In the statement and questions issued by the Mercantile Law Commissioners, there are no less than 19 points of difference between the Laws of England and Ireland and those of Scotland, relating to bills of exchange alone, and in order to determine how many of these 19 differences in the Law of Scotland are preferable to those of England and Ireland, and how many the contrary, or in what respects they may both require modification or alteration, much consideration is necessary. The present Bill proposes to deal with No. 15, being one only of these 19 points. The whole of these conflicting matters should be considered together, and it is dangerous to legislate upon this entire subject

by fractions, or upon one only of many subjects, each bearing more or less on the others.

Although the present measure relates chiefly to the summary mode of procedure to enforce the payment of a bill, yet it involves also several important alterations of the law in regard to bills of exchange generally; for instance, it proposes to throw the burden of proof on the debtor, and deny him a trial, unless he can give security for payment of the debt and costs. It should, therefore, be postponed till the Commissioners have made their report upon the several important rules in the laws of Scotland, which differ from those of England and Ireland, and the alterations which they recommend to be adopted.

This Bill, which has passed through the Upper House, now makes its appearance in the House of Commons at the same time as the new Bill by Mr. Keating and Mr. Mullings, of which notice was given some time ago. We deem it necessary to state the clauses fully in another page, and shall here advert very briefly to its general scope.

It is proposed by this second Bill, that in actions commenced according to the forms given in the schedule to the Act, the defendant must obtain leave of the Court or a Judge to appear and plead, and in default thereof the plaintiff may sign final judgment. Such application of the defendant must be supported by affidavit, and if the Judge shall deem the defence reasonable he may make an order accordingly.

If the defendant should be out of the jurisdiction, then another form of writ may be served, and the time of appearance and defence will be regulated by the distance.

These several proceedings, however, are to be taken within three months after the bill shall have come due. After that time an ordinary action must be resorted to.

Such is the plain and clear purport of Mr. Keating's Bill, and we think that no one who understands the subject can hesitate to prefer it over the Scottish Bill. It accords exactly with the usual course of procedure in the Courts at Westminster; it establishes no new office; the whole business will be conducted and carried into effect by the usual officers of the Court; the attorney who issues the writ for his client, and the clerk of the Court who affixes the authentic mark to the process, are each engaged in the ordinary exercise of their duty, and the improvement in the practice will be perfectly easy and considerably less expensive.

It must not be imagined that the Profes-

sion has any interested ground of opposition to the proposed "summary diligence." We believe that the cost of the new proceeding will be greater than the old, and that, besides the fees to be paid to the Notary and the Registrar, the emoluments of the Attorney, will be more than they are at present. It may be granted, that heretofore the Attorney's charges were greater in England than in Scotland, but all that is now changed, and the costs of an action on a bill of exchange, whether defended or not, is less than on the northern side of the Tweed. We prefer, however, our own accustomed proceedings, with the practice of which we are already familiar, and can see no reason for the experiment.

If the Legislature should determine to shorten the time for issuing executions against drawers and indorsers of bills of exchange as well as acceptors, they may effect the object by Mr. Keating's Bill, and preventing delay by useless defences, but it cannot be necessary to introduce a new system of procedure and appoint new officers to carry it into effect.

#### FACILITATING THE REMEDIES ON BILLS OF EXCHANGE.

THE following is the Bill brought in by Mr. Keating and Mr. Mullings, for facilitating the remedies on Bills of Exchange and Promissory Notes, by the prevention of frivolous and fictitious Defences on Actions thereon:—

WHEREAS *bond fide* holders of dishonoured bills of exchange and promissory notes are often unjustly delayed and put to unnecessary expense in recovering the amount thereof, by reason of frivolous or fictitious defences to actions thereon: for remedy thereof be it enacted, as follows:—

1. From and after the day of 1855, all actions upon bills of exchange or promissory notes commenced within three months after the same shall have become due and payable, may be by writ of summons in the special form contained in Schedule A. to this Act annexed, and indorsed as therein mentioned; and it shall be lawful for the plaintiff, on filing an affidavit of personal service of such writ within the jurisdiction of the Court, or an order for leave to proceed, as provided by the Common Law Procedure Act, 1852, and a copy of the writ and of summons and the indorsements thereon, in case the defendant shall not have obtained leave to appear, and have appeared to such writ according to the exigency thereof, at once to sign final judgment in the form contained in Schedule B. to this Act annexed (on which judgment no proceeding in error shall lie), for any sum not exceed-

ing the sum indorsed on the writ, together with interest, at the rate specified (if any), to the date of the judgment, and a sum for costs to be fixed by the Masters of the Superior Courts or any three of them, subject to the approval of the Judges thereof or any eight of them (of whom the Lord Chief Justices and the Lord Chief Baron shall be three), unless the plaintiff claim more than such fixed sum, in which case the costs shall be taxed in the ordinary way, and the plaintiff may upon such judgment issue execution forthwith.

2. A judge of any of the said Courts shall, upon application within the period of eight days from such service, give such leave to appear to such writ, and to defend the action on affidavits satisfactory to him, disclosing a defence to such action upon the merits.

3. A Judge of any of the said Courts may either before or after judgment give such leave to appear to such writ, and to defend the action, although there be not disclosed a defence to such action on the merits if it shall appear to such Judge to be reasonable so to do, in which case such Judge may impose such terms as appear to him to be just.

4. In case any defendant is residing out of the jurisdiction of the Superior Courts, actions upon bills of exchange or promissory notes commenced within three months after the same shall have become due and payable, may be by writ, with the indorsement thereon, in the form contained in Schedule C., and the time for application for leave to appear to such writ shall be regulated by the distance from England of the place where the defendant is residing; and it shall be lawful for a Judge, upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction, and that the writ was personally served upon the defendant, or that reasonable efforts were made to effect personal service upon the defendant, and that it came to his knowledge, and either that the defendant willfully neglected to apply for leave to appear to such writ, or that he is living out of the jurisdiction of the said Courts, in order to defeat or delay his creditors, to direct from time to time that the plaintiff should be at liberty to proceed in the action in such manner and subject to such conditions as to the Judge may seem just, having regard to the time allowed to the defendant to apply for leave to appear being reasonable, and all other circumstances of the case: provided always, that the plaintiff shall, and he is hereby required to, prove the amount of the debt claimed by him in such action, before one of the Masters of the said Superior Court, and the making such proof shall be a condition precedent to his obtaining judgment.

5. The enactments in this Act as to the giving leave to appear and defend, and as to appearances, shall extend as well to cases where the defendant resides out of the Jurisdiction of the Superior Courts as to cases where he is within it at the time of the service of the writ of summons upon him.

6. The provisions of the Common Law Procedure Act, 1854, and all rules made under or by virtue of either of the said Acts, shall, so far as the same are or may be made applicable, extend and apply to all proceedings to be had or taken under this Act; and this Act shall be construed and carried into effect as if it had formed a part of the said first-mentioned Act.

7. Nothing in this Act shall extend to Ireland or Scotland.

**SCHEDULES REFERRED TO IN THE FOREGOING ACT.**

**VICTORIA, by the Grace of God, &c.**

To C. D., of \_\_\_\_\_, in the county of \_\_\_\_\_. We warn you, That unless within eight days after the service of this writ on you, inclusive of the day of such service, you obtain leave from one of the Judges of the Courts at Westminster to appear, and do within that time appear in our Court in an action at the suit of A. B., the said A. B. may proceed to judgment and execution. Witness, &c.

*Memorandum to be subscribed on the Writ.*

N.B.—This writ is to be served within six calendar months from the date hereof, or if renewed, from the date of such renewal, including the day of such date, and not afterwards.

*Indorsement to be made on the Writ before service thereof.*

This writ was issued by E. F., of \_\_\_\_\_, attorney for the plaintiff. Or, this writ was issued in person by A. B., who resides at [mention the city, town, or parish, and also the name of the hamlet, street, and number of the house of the plaintiff's residence.]

*Indorsement.*

The plaintiff claims [\_\_\_\_\_ pounds principal and interest], or \_\_\_\_\_ pounds balance of principal and interest due to him as the payee [or indorsee] of a bill of exchange or promissory note, of which the following is a copy:—

[Here copy bill of exchange or promissory note, and all indorsements upon it.]

And if the amount thereof be paid to the plaintiff or his attorney within \_\_\_\_\_ days from the service hereof, further proceedings will be stayed.

**NOTICE.**

Take notice, that if the defendant do not obtain leave from one of the Judges of the Courts within eight days after having been served with this writ, inclusive of the day of such service, to appear thereto, and do within such time cause an appearance to be entered for him in the Court of which this writ issues, the plaintiff will be at liberty at any time after the expiration of such eight days to sign final judgment for any sum not exceeding the sum above claimed, and the sum of \_\_\_\_\_ pounds for costs, and issue execution for the same.

Leave to appear may be obtained on an application at the Judges' Chambers, Serjeants Inn, London, supported by affidavit showing that there is a defence to the action on the merits, or that it is reasonable that the defendant should be allowed to appear in the action.

*Indorsement to be made on the Writ after Service thereof.*

This writ was served by X. Y. on L. M. (the defendant the defendants), on Monday, the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_

By X. Y.

**B.**

In the Queen's Bench.

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 18 [Day of signing Judgment].

ENGLAND (to wit). A. B. in his own person [or by \_\_\_\_\_ his attorney] sued out a writ against C. D., indorsed as follows:— [Here copy Indorsement of Plaintiff's Claim.] and the said C. D. has not appeared:

Therefore it is considered that the said A. B. recover against the said C. D. \_\_\_\_\_ pounds, together with \_\_\_\_\_ pounds for costs of suit

**C.**

*Writ where the Defendant resides out of the Jurisdiction.*

**VICTORIA, by the Grace of God, &c.**

To C. D. of \_\_\_\_\_ in the county of \_\_\_\_\_ or now residing at [Paris in France].

We warn you, that unless within [here insert a sufficient number of days within which the defendant might apply to a Judge for leave to appear, with reference to the distance he may be from England] days after the service of this writ on you, inclusive of the day of such service, you obtain leave from one of the Judges of the Courts at Westminster to appear, and do within that time appear in the Court of \_\_\_\_\_ in an action at the suit of A. B., the said A. B. may proceed to judgment and execution. Witness, &c.

*Memorandum to be subscribed on the Writ.*

N.B.—This writ is to be served within six calendar months from the date thereof, or if renewed, from the date of such renewal, and including the day of such date, and not afterwards.

*Indorsement to be made on the Writ before Service thereof.*

This writ is for service out of the jurisdiction of the Court, and was issued, &c. [as a writ for service within the jurisdiction.]

The indorsement required by the eighth section of the Common Law Procedure Act, 1854, should be made on the writ, but should allow the defendant the time limited for application for leave to appear to pay the debt and costs.

The indorsement of claim to be the same as on writ for service within the jurisdiction.

**NOTICE.**

Take notice, that if you, *C. D.* the defendant, do not within the term limited in this writ obtain leave from one of the Judges of the Court to appear thereto, and do within such term appear in the Court out of which this writ issues, *A. B.* the plaintiff will at any time after be at liberty to sign judgment, &c. [*as in notice on writ for service within the jurisdiction.*]

**SPEEDY TRIAL OF OFFENDERS.**

THE following is Lord Brougham's Bill for the more speedy Trial and Punishment of Offenders in certain Cases.

10 & 11 Vict. c. 82; 13 & 14 Vict. c. 37. Justices may send case for trial. Prisoner may elect to be tried; s. 1.

How charge and caution to be made. 11 & 12 Vict. c. 42, s. 18.; s. 2.

Power to justices to hear and determine. 10 & 11 Vict. c. 82; 13 & 14 Vict. c. 37. One magistrate may in certain cases perform acts usually done by two; s. 3.

Proceedings under this Act a bar to further proceedings; s. 4.

Power to one justice to remand and take bail; s. 5.

As to the summoning and attendance of witnesses; s. 6.

Service of summons; s. 7.

Form of conviction; s. 8.

No certiorari, &c.; s. 9.

Convictions to be returned to the Quarter Sessions; s. 10.

No forfeiture upon convictions under this Act; s. 11.

Expenses of prosecutors how paid; s. 12.

Orders for payment, how made; s. 13.

Payment of costs, &c., with respect to boroughs, &c.; s. 14.

Proceedings against persons acting under this Act; s. 15.

The Bill recites that, in order in certain cases to ensure the more speedy trial of offenders, and to avoid the evils of their long imprisonment previously to trial, it is expedient to allow of such offenders being proceeded against in a more summary manner than is now by law provided.

The proposed enactments are as follow:

1. Every person who shall subsequently to the passing of this Act be charged with having committed or having attempted to commit, or with having been an aider, abettor, counsellor, or procurer in the commission of any offence which now or hereafter may be by law deemed or declared to be simple larceny or punishable as simple larceny, and where such offence shall not be attended with circumstances of aggravation, that is to say, where it shall not be

charged that the offender had been previously convicted of larceny, and where the amount or value of the money or chattel stolen shall not be of the actual value of 20s. or upwards, and where the larceny shall not have been attended with violence from the person, or with the breaking of any lock or fastening, or have been committed by a servant, shall, upon conviction thereof, upon his own confession or upon proof before any two or more justices of the peace for any county, riding, division, borough, liberty, or place in petty sessions assembled at the usual place and in open Court, be committed to the common gaol or house of correction within the jurisdiction of such justices, there to be imprisoned, with or without hard labour, for any term not exceeding three calendar months: Provided always, that if such justices shall be of opinion before the person charged shall have made his or her defence that the charge is from any circumstance a fit subject for prosecution by indictment, or if the person charged shall, upon being called upon to answer the charge, object to the case being summarily disposed of under the provisions of this Act, such justices shall, instead of summarily adjudicating thereupon, deal with the same in all respects as if this Act had not passed.

2. Where any person shall be charged under this Act, the justices before whom such charge shall be made shall cause the same to be taken in writing and entered in a book to be kept for that purpose by the clerk of such justices in the form following; that is to say, "You *A. B.* are charged with larceny, for that you on the       day of       , in the year of our Lord 185       , at the parish of       in the county of       feloniously did steal, take, and carry away [*describe the article stolen*] of the moneys, goods, and chattels [*as the case may be*] of *C. D.*," which charge shall be distinctly read to the person charged, and the justices shall then call upon the person charged to plead thereto, and shall at the same time caution him as to the nature and effect of his plea, in these words or words to the like effect: "You have heard the charge against you, you are now called upon to plead thereto; you are not bound to say anything beyond your plea, unless you desire to do so, but what you do say will be taken down in writing, and may be used in evidence against you; if you plead 'Guilty,' you must not do so under any expectation of favour for so doing, but your plea will be taken, and a conviction filed against you; if you elect to be tried, you may either be tried now by us, or by a jury. Do you now wish to plead 'Guilty' or do you wish to be tried, and how?"

3. Any two or more justices of the peace for any county, riding, division, borough, liberty, or place in petty sessions assembled, and in open Court, before whom any such person as aforesaid charged with any offence made punishable under this Act shall be brought to appear, are hereby authorised to hear and de-

termine the case under the provisions of this Act: Provided always, that any magistrate of the police Courts of the metropolis sitting at any such police Court, and any stipendiary magistrate sitting in open Court, having by law the power to do acts usually required to be done by two or more justices of the peace, shall and may within their respective jurisdictions hear and determine every charge under this Act, and exercise all the powers herein contained, in like manner and as fully and effectually as two or more justices of the peace in petty sessions assembled as aforesaid can or may do by virtue of the provisions in this Act contained.

4. Every person who shall have been convicted or acquitted under the authority of this Act shall be released from all further or other proceedings for the same cause.

5. Any justice or justices of the peace, if he or they shall think fit, may remand for further examination or for trial, or suffer to go at large upon his or her finding sufficient surety or sureties, any such person as aforesaid charged before him or them with any such offence as aforesaid, and every such surety shall be bound by recognisance to be conditioned for the appearance of such person before the same or some other justice or justices of the peace for further examination, or for trial before two or more justices of the peace in petty sessions assembled as aforesaid, or for trial at some Superior Court, as the case may be, and every such recognisance may be enlarged from time to time by any such justice or justices to such further time as he or they shall appoint, and every such recognisance shall be discharged, without fee or reward, when the party shall have appeared according to the condition thereof.

6. It shall be lawful for any justice of the peace by summons to require the attendance of any person as a witness upon the hearing of any case before two justices under the authority of this Act, at a time and place to be named in such summons; and such justice may require and bind by recognisance all persons whom he may consider necessary to be examined touching the matter of such charge to attend at the time and place to be appointed by him, and then and there to give evidence upon the hearing of such charge, and in case any person so summoned or required or bound as aforesaid shall neglect or refuse to attend in pursuance of such summons or recognisance, then upon proof being first given of such person having been duly summoned as herein-after-mentioned, or bound by recognisance as aforesaid it shall be lawful for the justices before whom any such person ought to have attended to issue their warrant to compel his appearance as a witness.

7. Every summons issued under the authority of this Act may be served by delivering a copy of the summons to the party, or by delivering a copy of the summons to some inmate at such party's usual place of abode, and every person so required by any writing under the

hand or hands of any justice or justices to attend and give evidence shall be deemed to have been duly summoned.

8. The justices before whom any person shall be summarily convicted of any such offence as herein-before mentioned may cause the conviction to be drawn up in the form of words set forth in the schedule to this Act annexed, or in any other form of words to the same effect, which conviction shall be good and effectual to all intents and purposes.

9. No conviction shall be quashed for any want of form, or be removed by certiorari or otherwise into any of her Majesty's Superior Courts of Record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

10. The justices of the peace before whom any person shall be convicted under the provisions of this Act shall forthwith thereafter transmit the conviction and recognizances to the clerk of the peace for the county, riding, borough, division, liberty, or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the Court of General Quarter Sessions of the Peace; and the clerk of the peace shall transmit to one of her Majesty's principal secretaries of state a monthly return of the names, offences, and punishments mentioned in the convictions, and such other particulars as may from time to time be required.

11. No conviction under the authority of this Act shall be attended with any forfeiture.

12. The justices in petty sessions assembled as aforesaid, before whom any person shall be prosecuted or tried for any offence cognizable under this Act, are hereby authorised and empowered, at their discretion, at the request of the prosecutor or of any other person who shall appear on recognisance or summons to prosecute or give evidence against any person accused of any such offence, to order payment to the prosecutor and witnesses for the prosecution of such sums of money as to the justices shall seem reasonable and sufficient to reimburse such prosecutor and witnesses for the expenses they shall have severally incurred in attending before the examining magistrates, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein, and to order payment to the constables and other police officers for the apprehension and detention of any person or persons so charged, and although no conviction shall take place it shall be lawful for the said justices to order all or any of the payments aforesaid when they shall be of opinion that the parties, or any of them, have acted *bond fide*; and the amount of expenses of attending before the examining magistrate, and the compensation for trouble and loss of time therein, and the allowances to the constables and other peace officers for the apprehension and detention of the offender, and the allowances to be paid to the prosecutor, witnesses, and consta-

bles for attending at the said petty sessions, shall be ascertained and certified under the hands of the justices in such petty sessions assembled as aforesaid: Provided always, that the amount of the costs, charges, and expenses attending any such prosecution, to be allowed and paid as aforesaid, shall not in any one case exceed the sum of 40s.; provided also, that no expenses shall be allowed and paid to prosecutors, witnesses, and constables exceeding the sums allowed according to a scale of fees and allowances authorised and settled by the justices of the peace at quarter sessions assembled, according to the Statute in such case made and provided with respect to preliminary inquiries before justices of the peace in cases of felony.

13. Every such order of payment to any prosecutor or other person, after the amount thereof shall have been certified by the justices as aforesaid, shall be forthwith made out and delivered by the clerk of the said petty sessions to such prosecutor or other person upon such clerk being paid for the same, the sum of 6d. and no more, and, except in cases hereinafter provided for, shall be made upon the treasurer of the county, riding, or division in which the offence shall have been committed or shall be supposed to have been committed, who is hereby authorised and required upon sight of every such order forthwith to pay to the person named therein, or to any other person duly authorised to receive the same on his or her behalf, the money in such order mentioned, and shall be allowed the same in his accounts; provided always, that no such order shall be valid, nor shall such treasurer pay any money thereon, unless it shall have been framed and presented in such form and under such regulations as the justices of the peace in quarter sessions assembled shall from time to time direct.

14. And whereas offences cognizable under this Act may be committed in liberties, franchises, cities, towns, and places, which do not contribute to the payment of any county rate, some of which raise a rate in the nature of a county rate, and others have neither any such rate nor any fund applicable to similar purposes, and it is just that such liberties, franchises, cities, towns, and places should be charged with all costs, expenses, and compensations ordered by virtue of this Act in respect of such offences as aforesaid committed or supposed to have been committed therein respectively: Be it therefore enacted, that all sums directed to be paid by virtue of this Act in respect of such offences as aforesaid committed or supposed to have been committed in such liberties, franchises, cities, towns, and places shall be paid out of the rate in the nature of a county rate, or out of any fund applicable to similar purposes where there is such a rate or fund, by the treasurer or other officer having the collection or disbursement of such rate or fund, and where there is no such rate or fund in such liberties, franchises, cities, towns, or places, shall be paid out of the rate or fund for the relief of the poor of the parish, or town-

ship, district, or precinct therein, where the offence was committed or supposed to have been committed, by the overseers or other officer having the collection or disbursement of such last-mentioned rate or fund; and the order of the Court shall in every such case be directed to such treasurer, overseers, or other officer respectively, instead of the treasurer of the county, riding, or division, as the case may require.

15. All actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county where the fact was committed, and shall be commenced within three calendar months after the fact committed and not otherwise; and notice in writing of such action or prosecution and of the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action or prosecution, and in any such action or prosecution the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before the action brought, or if a sufficient sum of money shall have been paid into Court after such action brought by or on behalf of the defendant, and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit or discontinue any such action or prosecution after issue joined, or if upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in such action the plaintiff shall not have costs against the defendant unless the Judge before whom the trial shall be shall certify his approbation of the action and of the verdict obtained thereupon.

16. Nothing in this Act contained shall be construed to affect the Juvenile Offenders Act, or shall extend to Scotland or Ireland.

SCHEDULE OF FORM TO WHICH THIS ACT REFERS.

*Form of Conviction.*

To wit, } Be it remembered, that on the  
 day of in the year of our  
 Lord 185 , and at in the county of  
 [or riding, division, &c., as the  
 case may be], A.C. is convicted before us J.P.  
 and Q.R., two of her Majesty's justices of the  
 peace for the county [or riding, &c.], or me, a  
 magistrate of the police court of [as  
 the case may be], for that he the said A.C. did  
 [specify the offence, and the time and place  
 when and where the same was committed, as the  
 case may be, but without setting forth the evi-  
 dence]; and we adjudge the said A.C. for his  
 said offence to be imprisoned in the  
 of and there to be kept to hard labour  
 for the space of ; or [we] [or I]  
 adjudge the said A.C. to be imprisoned for the  
 space of months in the of  
 there to be kept to hard labour



scarcity of Commissioners to take acknowledgments of deeds by married women?

I know of two towns in which the Lord Chief Justice of the Common Pleas has refused to fill up the vacancy caused by the death of a Commissioner in each, by which the single Commissioner now remaining is rendered useless, and parties have to travel, in the one case 12 miles, and in the other nine, to the residences of other Commissioners in order to get acknowledgments taken—a cause of unnecessary inconvenience and expense, the latter often amounting to a moiety of the total cost of the conveyances in cases of small properties.

I know also a case of a solicitor in a large town, having furnished to the Lord Chief Justice, with his memorial applying for the appointment of Commissioner, a certificate from the Registrar of Deeds of the county of York, that he had registered upwards of 200 deeds in one year, together with the highest possible testimonials of character, standing, and qualifications, yet this gentleman could not get the appointment, and his numerous clients and himself are still exposed to the inconvenience of going to the offices of other solicitors to get acknowledgments taken, and delays are often experienced by them from the difficulty of finding two Commissioners at home.

I have heard of other cases in which both the solicitors and the public have great cause of complaint from the withholding these appointments, and I have no doubt that many of your readers could furnish from their own experience further instances.

What reason there can be for putting the Public and the Profession to this inconvenience, it is not easy to comprehend. There can be no object in creating a monopoly, as the remuneration is so trifling, and there seems no reason why a sufficient number of respectable solicitors should not be appointed in every town in England to conduct efficiently the public business of the country in regard to acknowledgments.

It would be easy to guard against improper persons obtaining the appointments by the Lord Chief Justice requiring applicants in the first instance to submit their names for approval to the Council of the Incorporated Law Society, in the same manner that the Lord Chancellor has already done with respect to Commissioners to administer Oaths in Chancery.

A SUBSCRIBER.

## APPEALS BEFORE THE LORD CHANCELLOR.

### BUSINESS OF THE COURT.

Mr. Malins mentioned an appeal from Vice-Chancellor Wood, which embraced the same question as one from Vice-Chancellor Stuart, and expressed a hope that his Lordship would direct them to be heard at the same time.

His Lordship asked if they would take much time?

Mr. Malins was afraid they must occupy three or four days.

His Lordship observed, that if they were so long they must go into the paper of the Lords Justices. An understanding had been come to, that in the distribution of appeals for the present, the Lords Justices were to hear those that were likely to take time, and his Lordship to hear short ones, that could be disposed of in a single sitting. His Lordship was obliged to sit for several days in the week in the House of Lords, and it was inconvenient to have the hearing of cases resumed at intervals; he therefore proposed to take no appeals except short ones.—From the *Morning Chronicle* of Feb. 15.

## BARRISTERS CALLED.

*Hilary Term, 1855.*

LINCOLN'S INN.

Jan. 26.

William Smart, Esq., B.A.  
John Stewart, Esq.  
George Williamson, Esq., M.A.  
John Mirehouse, Esq., M.A.  
Edward Brent Prest, Esq., B.A.  
P. L. Sclater, Esq., M.A.  
Henry Perkins Wolrige, Esq., B.A.  
John Grasett, Esq., M.A.  
John William Turnbull, Esq., B.A.  
Charles Andrew Prescott, Esq., B.A.  
William Francis Dury, Esq., B.A.

### INNER TEMPLE.

Jan. 26.

John William Slegg, Esq., B.C.L.  
Thomas Edward Chitty, Esq., B.A.  
William Austin Nichols, Esq.  
John Elliot, Esq.  
Fred. Kneller Haselfoot Cock, Esq., M.A.  
Hugh Thomas Cameron, Esq.  
Robert Kibble Hervey, Esq., B.A.  
William Granville Saurin, Esq., B.A.

### MIDDLE TEMPLE.

A. Legall, Esq.  
L. C. Burt, Esq.  
Henry Weston, Esq.  
Robert Mackenzie, Esq.

John Gardiner, Esq.  
William John Abram, Esq.  
John Savill Vaisey, Esq.

GRAY'S INN.

Jan. 26.

Morgan Augustin M'Donnell, Esq.  
James Cooper, Esq.

## UNCLAIMED DIVIDENDS IN CHANCERY.

CAUSES UNDEALT WITH FOR 15 YEARS.

[*Concluded from p. 279, ante.*]

Maddison v. Bird  
Mathew v. Brown. The account of Ann, servant to Jose Maria Rebeiro, Captain of a Frigate, a legatee  
Mander v. Butler  
Martin v. Croome  
Meachham v. Collins, and Collins v. Meachham  
Monk v. Druce  
Moore v. Frowd  
Moore v. Greenhill  
Markham v. Grace  
Matheson v. Hardwick. The personal estate of James Dunbar  
Mariborough, Duchess of, v. Hopeon  
Martin v. Hobson. The account of the separate estate of Robert Christian  
Miller, a lunatic v. Dame Ellen Riggs. The real estate  
M'Grath v. J. Anson  
Morgan v. Lewis  
Mason v. Lamb  
Mallory v. Mallory  
Maychell v. Machell  
Mills. In the matter of — Abraham, Esq., and Mary his wife, and Richard Edmonds, gentleman, and Martha his wife  
Manning v. Manning. The account of Ann Manning, the legatee  
Mytton v. Mytton. The account of the purchase-money of the Coal Mines in Oswestry  
M'Pherson v. Money. The account of George Forbes  
Mackenzie v. Musgrove  
Micklethwaite v. Vavasour, and Swainson v. Vavasour  
Massingberd v. Walls. In Master Montagu's office  
Mosley v. Ward. Money arising from the sale of the real estates of the testatrixes Susannah Roberts and Dorothy Townman  
Marsh v. Whitfield  
Mainwaring v. Wilding  
Newen v. Beare  
Newell v. Griffin. The account of the defendant Hugh Vane  
Newell v. Griffin. The account of the defendant Richard Parry  
Newell v. Griffin. The account of the defendant William Parry  
Nee v. Hardman  
Norman v. Kynaston

Nee v. Hardman. The account of the plaintiff Joseph Nee, the infant  
Neltherpe v. Pennymann, and Neltherpe v. Pennymann. The administrator's account  
Oakes v. Maidman. The separate account of Thomas Gambier Parry, a minor  
Okeover v. Okeover  
Palmer v. Barradall. Mary Palmer's contingent account  
Pomeroy v. Brewer  
Palmer v. Bonnington  
Plant v. Boucher  
Poland v. Collins  
Phillips v. Burdett  
Pilebury v. Dickenson. Christiana Shaw, daughter of the late defendants Thomas Shaw and Mary his wife  
Powell v. Davidson. Ann Dobson and her children, their account in Master Pepys' office  
Pulteney v. Douglas. Charles Speeko Pulteney's account  
Pelham, ex parte Isaac  
Petruse v. Grove. The plaintiffs Araten Petruse and Dustagool Petruse, their account  
Pigott, Robert, and others v. Green. The legacy account  
Pigott v. Green  
Peters v. Henderson  
Pickett v. Johnson  
Powell v. Jenkin. The plaintiff's account  
Powles v. Jopling. The account of Mrs. Wright  
Poulteney v. Jones  
Paul v. Jarritt. The account of costs  
Priestley v. Lamb  
Potter v. Moore  
Parsons v. Nevill. Jacob Hern the son's account  
Parr v. Orme  
Peacock v. Peacock  
Pine v. Pine  
Palmer v. Potter  
Proctor, George, Esq.  
Prescott, Sir George v. Beeston, Bart., of Cheshunt, Herts  
Pickford v. Randall. The account of the infant defendant Lydia Wakeman  
Peacock v. Saggars. William Saggars' share of residue  
Patterson v. Stewart  
Pruen v. Scrambler. Account of William Turpenny  
Parkhurst v. Selwin  
Parr v. Wicks. The legacy account of Frederick Oliver  
Parker v. Pannier  
Mary Ramsden's Charity  
Raggett v. Arkenstall  
Rudston v. Anderson  
Roberts v. Ballard  
Rigge v. Baker Thomas Rigge's personal estate  
Rigge v. Baker. Rents and profits of the testator Thomas Rigge's real estates  
Roe v. Carter  
Roe v. Carter. The defendant Ann Walker's account  
Roff v. Caffrey

- Roundell v. Curren. The personal estate of John Curren  
 Francis Elizabeth Reeve, of Bath, widow  
 Ross v. Franklin. The account of the plaintiff Mary Wood, deceased  
 Roffey v. Greenhill  
 Rutherford v. Haynes  
 Rogers v. Keen  
 Radcliffe v. King. The legacy account of Jane St. Leger  
 Rice v. Lloyd  
 Raworth v. Marriott  
 Samuel Rodbard and wife, of Ebercreech, near Wincanton, Somersetshire  
 Rainford v. Park and Chaffers. The account of Olive Hall Thomas, Hannah Thomas Hall, George Hall, Elizabeth Humming, and Bella Hall  
 Rogers v. Rogers  
 Reade v. Reade. Vicarage of Shipton under Whichwood's account  
 Rolph v. Tidswell  
 Rushton v. Waddilove. The account of the Vicar of Aldborough  
 Ryder v. Webb and Selwyn v. Webb  
 Stiles v. Attorney-General  
 Stevens v. Aversay Robert Crooke and Elizabeth his wife, their account  
 Shairp v. Baker. The account of the children of Alexander Shairp  
 Earl of Stafford v. Cantillon  
 Solicitor-General v. Cooks Winford  
 Sweetland v. Coplestone  
 Stephens v. Dixon  
 Silk v. Dimsdale. The account of the unsatisfied creditors of Christopher Thompson  
 Smith v. Dyer  
 Sutton v. Edmonstone  
 Smith v. Fitzgerald  
 Lord Southampton v. Duke of Grafton. The account of principal, under the deed of 790.  
 Salmon v. Glenister  
 Slade v. Griffiths and Clark v. Slade  
 Speakman v. Gould  
 Sherard v. Earl of Harborough  
 Smith v. Hatch  
 Scates v. Hayes  
 Sykes v. Lord Henniker  
 Smithson v. Heygate  
 Stephenson v. Heathcote and Heathcote v. Stephenson  
 Evelyn Shirley, of Easington, in the county of Warwick, Esq.  
 Spurrell v. Hulce  
 Skerratt v. Ingmire  
 Sells v. Jenkins. The leasehold estate  
 Stackhouse v. King. The plaintiffs the infant's account  
 Stone v. Kemp  
 Shelley v. Lloyd. The account of the rents and profits of Tynygrigg Tenement  
 Earl of Shaftsbury v. Duke of Marlborough. The Woolvercot Lease Renewal Fund  
 Stenhouse v. Mitchell. The infant's general interest account  
 Scruton v. Middleton  
 Sparkes v. Ommanney. John Ommanney the testator's son's account  
 Smith v. Pontifex. The Lambeth Sunday School account  
 Smith v. Roberts. The account of personal estate of the testatrix  
 Sitwell v. Sitwell. The legacy account. William Hoare, Esq., absent beyond seas.  
 Stanhope, Walter Spencer, of Cannon Hall, in the county of York, Esq.  
 Sauer v. Shute  
 Slater v. Walker  
 Shawe v. Witham. The plaintiff Richard Shawe, his account  
 Tully v. Bradford  
 Tucker v. Craggs  
 Trafford v. Crosbie  
 Tucker v. Gloucester, Bishop of  
 Tugwell v. Goisin  
 Thames and Medway Canal, The Company of Proprietors of the  
 Tresselt v. Haedy  
 Thompson, Susannah, In the Matter of  
 Turner v. Howell. The account of Richard Howard, Esq., the trustee of the annuitant Mary Buckley  
 Ex parte the Rector of the Rectory and Parish Church of Tillington in the county of Sussex  
 Thomas v. Miles and Waysmith v. Thomas. The account of the personal representatives of William Miles, the son  
 Thistlethwayte v. Morshead. The defendant Elizabeth Morshead's account  
 Thomas v. Morris  
 Taylor v. Oldham. The account of the personal estate  
 Trevelyan v. Putt  
 Thorne v. Palmer  
 Thomas v. Parry  
 Turner v. Simms  
 Tuffnell v. Stoe. The account of the defendant Mary Secker  
 Tuffnell v. Stoe. The account of William Tuffnell, Thomas Samuel Jolliffe, and William Northey  
 Trevor v. Trevor. Widow Turffe, the annuitant's account  
 Thompson v. Woodthorp. The account of the defendant Thomas Wild, the infant  
 Thompson v. Woodthorp. The account of the defendant Sarah Ann Wild, the infant  
 Tylney, John, Earl, in London, Middlesex, and Essex, in Trustees, to be void, ex parte the Purchaser or Purchasers of the Estates devised by the Will of  
 Unet v. Cotton. The account of the defendant William Cotton, the grandson  
 Veitch v. Edye. James Borthwaite's account  
 Vyvian v. Pott. The account of Jane Russell and Hannah Russell, the annuitants  
 Vaughan v. Parry  
 Uzuld v. Purches etc. con.  
 Vernon v. Sandford. The parish of Bourton on the Water, Lower Slaughter, and Clapton charity account  
 Watson v. Bradley. Elizabeth Whitley's Monument in Stockton Churchyard, the account

Wheeler v. Brewen. Thomas Brewen's account  
 Wheeler v. Brewen. John Brewen's account  
 Wright v. Beacall  
 Wotton v. Brydges Elizabeth Coleman, late Scott  
 Weatherall v. Browne  
 Wilson v. Bott. The separate account of the defendant Thomas Bott and Eliza his wife.  
 Wall v. Bushby. The defendant Elizabeth Jones, the annuitant's account  
 Walker v. Clarke  
 Wilson v. Campbell  
 Webb v. Chambre. The interest account  
 West v. Collins. Jane Poore's account  
 Waldegrave v. Cony  
 Waldegrave v. Cony  
 Woods v. Crowfoot  
 Welstead v. Dutton  
 Wood v. Dulamee  
 Wallen v. Eastleak, Elizabeth, the wife of Samuel Slade, and the defendant Elizabeth Talmadge, the annuitant's account  
 Wilson v. Evans  
 Wagstaffe v. Everett. The defendant Elizabeth Rain's account  
 Walker v. Fisher  
 Woodward v. Grainge  
 Wells v. Gendron  
 Wheeler v. Gill  
 Watkins v. Hall  
 Wilkie v. Huddart. George Fordyce and Isabel his wife, their account  
 Wilkie v. Huddart. Mary Wilkie's account  
 Wragg v. Litchfield  
 Wentworth, Lord Viscount, v. Litchfield, Earl of  
 Wilkinson v. Marsano  
 Ward v. Morris  
 Ward v. Morris  
 Ward v. Morris  
 Williams v. Owens  
 Wynne v. Price. The account of Hester Wainman the annuitant  
 Wynne v. Price. The account of Elizabeth Williams the annuitant  
 Wynne v. Price. The account of Mary Williams  
 Wake v. Ridge  
 Waller v. Stanton. The account of Charlotte Emily Fry  
 Waldo v. Secker  
 Wrentmore v. Scudamore  
 Wakem v. Tozer. The account of the devisees of John Tozer, deceased  
 Wade v. Wade. Thomas Troughton, the infant's account  
 Ward v. Walker  
 Weyland v. Weyland. The defendant Ann Penny's annuity account  
 Walker v. Wedgwood  
 Webster v. Webster. The account of the legacy given to James David Webster Greenhill  
 Warren v. Whitworth  
 Ward v. Whitchurch. On account of the debts and legacies which are contingent

Winter v. Winter  
 White, Stephen, v. White, Betty, and others. The account of the defendant Elizabeth Seymour  
 Wyatt v. Wilkins  
 Yerbury v. Head. Jemima Elizabeth Watson's account  
 Yerbury v. Head. Jemima Elizabeth Watson's account  
 Yerbury v. Head. Jemima Elizabeth Watson's account  
 Yerbury v. Head. Elizabeth Sarah Watson's account  
 Yerbury v. Head. Elizabeth Sarah Watson's account  
 Yerbury v. Head. Elizabeth Sarah Watson's account  
 Yerbury v. Head. Rachel Watson's account  
 Yerbury v. Head. Rachel Watson's account  
 Yerbury v. Head. Rachel Watson's account  
 Yerbury v. Head. Thomas Watson's account  
 Yerbury v. Head. Thomas Watson's account  
 Yerbury v. Head. Thomas Watson's account  
 Yerbury v. Head. Eleanor Yerbury's annuity account  
 Young v. Winwood

## SELECTIONS FROM CORRESPONDENCE.

### LOSS OF RENT BY INSOLVENT DEBTORS.

LANDLORDS constantly suffer heavy losses by insolvents removing their goods on the eve of insolvency, and then seeking the benefit of the Insolvent Debtors' Act, or the great Statute of Frauds and Prejudices.

I would suggest that an Act be passed prohibiting the tenant thus defrauding his landlord from obtaining his discharge, unless the arrears of rent be paid. Surely there are several members of the more numerous branch of the Profession in Parliament who might originate such a wholesome measure.

A SUFFERER.

### SPECIFIC PERFORMANCE.

A. in July, 1853, purchases a plot of freehold land of B., who signs an agreement for the sale defining the terms. The purchaser pays B. a deposit of 5s., also, 10 days afterwards, 15l. on account of the price. A. not being able to get any title deduced to the land nine months afterwards, sues B. for the deposit, but is nonsuited, A. having omitted to get a stamp affixed to the contract.

Can A. now file a bill or claim for a specific performance of the agreement notwithstanding the proceedings to recover the deposit, which yet remains in the vendor's hands, or would the proceedings be considered in equity as a waiver of the contract?

BETA.

### SATURDAY HALF-HOLIDAY.

Sir,—In the month of August in last year, I observed in your columns a copy of a memorial which bore the signatures of nearly all the leading solicitors in the metropolis, and

professed to have for its object the closing of their offices at an early hour on Saturdays. I have not since heard anything further on the subject, and would therefore be obliged if you would kindly state what progress has been made in the movement. It has been said that no further attempt has been made to carry out the avowed object of the memorial even by those who were foremost in signing it—but I shall be glad to find from you that the benefits which the law clerks have been led to expect from this movement have not been nipped in the bud. J. W.

[The Council of the Law Society submitted the memorial to the Judges of the several Courts of Law and Equity, and to the Bar, but nothing conclusive has been done. The measure cannot be carried into effect without rules of all the Courts, closing their offices at the time proposed, namely, two o'clock on Saturdays. If the Courts continue sitting and the Law Offices are open during the present hours, it will be impracticable to close the solicitor's offices.—Ed.]

## NOTES OF THE WEEK.

### QUEEN'S BENCH NISI PRUS. COURTS.—IMPROVEMENTS IN THE CITY.

SOME improvements have been made on the suggestion, as we understand, of Mr.

Secondary Potter. Double doors and a bar have been placed at the entrance for counsel, attorneys, and witnesses, where a crowd generally assembles. One of several doors leading to the Court has been closed, and though the arrangements are only of a temporary nature, they much tend to the general comfort, and will, we trust, lead to further improvements, not only in this but in the other Courts, both at London and in Westminster.—From the *Daily News* of Feb. 13.

### UNQUALIFIED PRACTITIONERS IN THE POLICE COURTS.

An order has recently been issued by the Commissioners of Police, and read to the summoning officers at the various police offices, to the effect that they are not on any account to recommend solicitors to the persons whom they may have in their custody, or anybody else. We trust that the Home Secretary will issue directions to the magistrates at the different police courts to allow none but *certificated attorneys*, or their articled or managing clerks, duly authorised to practise before them.

### LAW APPOINTMENTS.

Mr. Robert William Watson has been appointed Clerk of the County Court at Dover, in the room of Mr. Wm. Stephen Shoolbridge, resigned.

Edward Francis Maitland, Esq., Sheriff of Argyle, is to be the new Solicitor-General for Scotland, in the room of Thomas Mackenzie, Esq., appointed one of the Lords of Session.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lord Chancellor.

*Wells v. Wells.* Jan. 31, 1855.

### ALLOWANCE TO RECEIVER AND MANAGER UNDER ORDER 1 OF OCTOBER 23, 1852.—INCREASE OF.

*An application was granted to vary the 1st Order of October 23, 1852, No. 6, which regulates the per centage of a receiver and manager, and for an allowance of such sum as the Chief Clerk, with the Judge's approval, should direct, where the business was very extensive.*

THIS was an application to vary the 1st Order of October 23, 1852, No. 6, which provides, that "the Chief Clerks of the Master of the Rolls and Vice-Chancellors, respectively, are directed to take," "for every certificate upon the passing of a receiver's or consignee's account, a further fee in respect of each 100l. received of 10s." in order that the trustee, who had been appointed the receiver and manager of an extensive business, might receive an adequate remuneration.

*Speed in support.*

The Lord Chancellor said; that an order would be made for the receiver to have such

sum as the Chief Clerk, with the Judge's approval, should direct.

### Master of the Rolls.

*Jefferies v. Mitchell.* Feb. 9, 1855.

### LEGATEE.—INTRINSIC EVIDENCE AS TO IDENTITY WHERE TWO SIMILAR RELATIONS OF SAME NAME.

*A testator by his will gave a legacy to his granddaughter Elizabeth Bawden. It appeared that there were two granddaughters of that name: Evidence was admitted as to which the testator intended by showing that one had lived with him for some time previously to his death, and had been told by him on several occasions he intended to leave her a legacy; and it was directed to be paid to her husband, on an affidavit of there being no marriage settlement.*

THE testator by his will gave a legacy to his granddaughter Elizabeth Bawden. It appeared, however, that there were two granddaughters of that name; and evidence was thereupon adduced, in this suit against the executors to enforce payment of the legacy by the husband of one, to show that his wife, whose maiden name answered the description,

had resided with the testator for some time previously to his death, and that he had told her on several occasions he intended to leave her a legacy on his death.

*R. Palmer and Hoare* for the plaintiff; *Lloyd, Follett, Nichols, and Gill* for the defendants.

The *Master of the Rolls* said, that the plaintiff's wife was entitled to the legacy upon the evidence which had been adduced, and that an order would be made for its payment to her husband with interest at four per cent. for the six years before bill filed, upon an affidavit that there was no marriage settlement,—the plaintiff to have the costs of suit.

#### Vice-Chancellor Kinderley.

*Farbrother and others v. Welchman*. Feb. 8, 1855.

#### INJUNCTION TO RESTRAIN ACTION OF ASSUMPSIT AGAINST AUCTIONEERS.

*Auctioneers had sold, by order of the agents of the Committee of a lunatic, so found by inquisition, certain of his property, and had paid the proceeds to such agents, and the same had been applied by direction of the Committee for the lunatic's benefit. On the death of the lunatic, his personal representative brought an action in assumpsit against the auctioneers, who pleaded the above facts, and now moved for an injunction to restrain the action, on the ground that, under the 17 & 18 Vict. c. 125, s. 83, a Court of Law could not recognise the validity of the pleas, which amounted to a set-off: Held, that as the accounts were not complicated, but it was a mere question of fact, whether the payment had been made to the Committee or to his agents, the pleas formed a good equitable defence, and the motion was refused with costs.*

It appeared that the plaintiffs, who were auctioneers, had sold by the order of the agents of Mr. Plasket, the Committee of a lunatic named Leek, so found by inquisition, certain plate and other property belonging to such lunatic, and that they had paid over the proceeds, after deducting their commission and expenses, to the agents, and that the same had been expended by the authority and direction of the Committee for the lunatic's benefit. On the death, however, of the lunatic, his personal representative brought an action in *assumpsit* against the plaintiffs to recover the proceeds of sale. Pleas were put in, setting out that Leek was a lunatic, that Plasket had been appointed his Committee, that payment had been made to him, and that such moneys had been expended by his authority and direction for the lunatic's benefit. The plaintiffs now moved for an injunction to restrain the action.

*Glasse, W. Hislop Clarke, and Raymond* in support, on the ground that under the 17 & 18 Vict. c. 125, s. 83,<sup>1</sup> a Court of Law would

not, in an action of *assumpsit*, recognise the validity of the pleas, which amounted to a set-off, and that the remedy was in equity.

The *Vice-Chancellor* (without calling on *Baily and Bovill*, contra), said, that the question was, whether a certain payment had been made to the Committee, or to any one authorised by him to receive the same, and it was not a question upon particular items of a complicated account. The plaintiffs had, by pleading at law, assumed that those pleas, if proved, would be a good defence to the action, and the defendant had adopted this view—the equity being, that the payment could not be made strictly the subject of set-off. The very purpose, however, of the Common Law Procedure Act was to prevent the necessity of parties coming to equity to get the benefit of an equitable defence. If the defendants at law obtained a verdict, judgment followed in their favour, and if it were otherwise it might be a question for this Court. The question was besides one on which this Court had still power to direct an issue, and so far as the lunacy was concerned, the jurisdiction of the Lord Chancellor was distinct from the Court of Chancery. The motion would be refused with costs.

#### Vice-Chancellor Stuart.

*Stanley and others v. Wrigley and others*.  
Jan. 27, 1855.

#### PARTITION OF ESTATE ON HEARING.—EVIDENCE WHERE ONE PARTY AN INFANT.

*On the hearing of a bill filed for the partition of an estate between a married woman and an infant tenant in fee in remainder on the determination of the life interest of his father as tenant by the curtesy, a decree for a partition was made upon evidence that it was for the infant's benefit and on the affidavits of two surveyors that they had made a division in two equal lots.*

THIS bill was filed for the partition of an estate between a married woman and an infant tenant in fee in remainder on the determination of the life interest of his father as tenant by the curtesy. On the cause coming on for hearing, the affidavits of two surveyors were adduced, alleging that they had divided the estate into two lots of equal value, according to a schedule and plan annexed, and both the married woman and the father of the infant tenant in fee approved of the apportionment. It was also sworn that it would be for the infant's benefit.

the defendant, or plaintiff in replevin, in any cause in any of the Superior Courts in which,

if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds to plead the facts which entitled him to such relief by way of defence, and the said Courts are hereby empowered to receive such defence by way of plea; provided that such plea shall begin with the words 'For defence on equitable grounds,' or words to the like effect."

<sup>1</sup> Which enacts that, "it shall be lawful for

*appointed expressly provided that they should be paid for by a poundage on the rates to be deducted.*

*Quære, whether the proper course was not to obtain a mandamus on the overseers to make a rate for the purpose?*

THIS was an action by the plaintiff, who had been appointed by the defendants, to collect the rates in the parish of Wanstead, to recover his poundage on the rates, which had been collected by him during four years, and paid over without deducting such poundage as directed by the Act of Parliament under which he was appointed. It appeared that the defendants denied their liability, and that the overseers were of opinion they had no power to make the payment as the poundage was not a charge on the rates for the current year. On the trial before *Martin, B.*, the plaintiff obtained a verdict, subject to this motion to enter a nonsuit, which had accordingly been obtained.

*Bramwell and Raymond* showed cause.

The Court (without calling on *Lush*, in support) said, that the defendants were not liable, as the Act expressly provided for the payment for the services of the collectors out of the rates, and that the plaintiff should therefore have stopped his poundage. The only chance of a remedy was by mandamus on the overseers to make a rate for the purpose. The rule would therefore be made absolute.

*Watson v. Humphrey and another.* Feb. 9, 1855.

ADJUDICATION IN BANKRUPTCY ON JUDGMENT DEBT INCLUDED IN SCHEDULE TO PETITION IN INSOLVENCY.

Held, on special case by direction of the Lords Justices, that a judgment debt, although inserted by the debtor in the schedule to his petition under the Insolvent Debtors' Act, 1 & 2 Vict. c. 110, and on which he was discharged, is a good and sufficient petitioning creditor's debt to support an adjudication in bankruptcy, notwithstanding he had been taken in execution under such judgment;—the Statute only bars the right of the creditors in the schedule to sue a discharged insolvent for their respective debts.

THIS was a special case, by direction of the Lords Justices, for the opinion of this Court, from which it appeared that the defendant had obtained a judgment against the plaintiff in an action, under which he was taken in execution, but obtained his discharge on petition under the 1 & 2 Vict. c. 110, to the Ipswich County Court. The plaintiff had inserted in the schedule to his petition the defendant with his other creditors, but the defendant filed a petition in the London Court of Bankruptcy against the plaintiff, who was a trader, under which he was adjudged a bankrupt by Mr. Commissioner Holroyd. Against this decision the plaintiff appealed to the Lords Justices, who directed this special case.

*Cowling and Fletcher* for the plaintiff; *Montagu Smith and Dasent* for the defendants.

The Court said, that in accordance with the decision of *Jellis v. Mountford*, 4 B. & Ald. 264, the debt was not satisfied by the mere taking in execution of the debtor, as a holding in prison was also required, and the debtor had been discharged by operation of law without the consent of the creditor. Although the Statute 1 & 2 Vict. c. 110,<sup>1</sup> put an end to the right of the creditors in the schedule to sue an insolvent for their respective debts, it provided that the defendant might in certain cases be adjudged a bankrupt on the petition of any creditor who appeared. The Statute applied to the general body of creditors named in the schedule, but not to those who had taken active proceedings. The plaintiff had therefore been properly adjudged a bankrupt, and the defendants were entitled to judgment.

#### Crown Cases Reserved.

*Regina v. Tew.* Jan. 20, 1855.

CONVICTION. — GRAND JURY SWORN BY CRIER, INSTEAD OF BY CLERK OF THE PEACE.

*The grand jury are properly sworn at the Sessions, although sworn by the crier and not by the clerk of the peace, inasmuch as either acts as the officer of the Court who in fact administers the oath.*

In this indictment at the Carmarthen Assizes, a point was reserved as to the validity of the trial—the grand jury having been sworn by the crier instead of by the clerk of the peace.

No counsel appeared.

The Court said, that it made no difference whether the oath was administered by the clerk of the peace or by the crier, as either acted as the officer of the Judge, who in fact administered the oath. The conviction would therefore be affirmed.

<sup>1</sup> Which enacts (s. 90), that "no person who shall have become entitled to the benefit of this Act by any such adjudication as aforesaid shall at any time thereafter be imprisoned by reason of the judgment so as aforesaid entered up against him or her according to this Act, or for or by reason of any debt or sum of money or costs, with respect to which such person shall have become so entitled, or for or by reason of any judgment, decree, or order for payment of the same;" and (s. 91) that "after any person shall have become entitled to the benefit of this Act by any such adjudication as aforesaid, no writ of *fi. fa.* or *elegit* shall issue on any judgment obtained against such prisoner for any debt," &c. Under s. 39, "the filing of the petition of every person in actual custody, who shall be subject to the laws concerning bankrupts, and who shall apply by petition to the said Court for his discharge from custody, according to this Act, shall be accounted and adjudged an act of bankruptcy from the time of filing such petition."

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

— Still attended at your service.—*Shakespeare.*

SATURDAY, FEBRUARY 24, 1855.

### UNQUALIFIED PARLIAMENTARY PRACTITIONERS.

It is a grievance of old date that the Speaker of the House of Commons, and his officers, allow persons not Attorneys or Solicitors to enrol themselves as Parliamentary Agents, and practise in support of, or in opposition to, private Bills before the House of Commons and its Committees. The Legislature has from the earliest times—certainly not less than six hundred years—required that the Attorneys or Agents who represent the Suitors of the Courts, whether Superior or Inferior, should be duly qualified practitioners, examined by the Judges and admitted on the Roll as officers of the Court. No man could practise in the old County Courts, any more than he can in the new, without being an Attorney of the Courts of Westminster.

Yet in the High Court of Parliament, in presenting Bills and Petitions to either House, in attending Committees, the mere entry of the name on the Roll of Parliamentary Agents operates as a legal admission to appear and practise before these high tribunals. Nay more, whilst the oldest and most respected Attorney on the Roll of the Superior Courts is not allowed to open his mouth or address a single Judge sitting in the practice Court—[the old side-bar rules are no more]—Parliamentary Agents may appear at the Bar of either House or in any of their Committees, however numerous or important. The strenuous exertions of the Bar of England, which have successfully excluded the Attorney and Solicitor from being heard in the Courts of Law and Equity,—nay more, from any audience in the Quarter Sessions, and, forsooth, also from the Insolvent

Debtors' Court,—has not prevailed in the Senate of the Kingdom. There anybody may be a Legal Practitioner. A Barrister's Clerk, an Attorney's Clerk, a Law Stationer, or any one who can write his name, may walk into the Parliamentary Office and claim admission on the Speaker's Roll. He undergoes no examination, legal or otherwise, and is not called upon to prove that he has any knowledge whatever of the principles of Law or the practice of Parliament. He is probably something of an electioneering agent, possessed of considerable energy, and no small share of assurance. He is therefore qualified to be a Parliamentary Agent. He learns the routine of the House, and, with the aid of some intelligent clerk, works his way through the usual course of proceeding.

Now, surely, it must be manifest that a considerable amount of legal knowledge is essential to superintend a private Bill of importance through its various stages:—to present and conduct it in due form, to collect the evidence necessary to support it, to satisfy the House and its Committee that the measure is proper to be entertained, and to provide against injustice being done towards parties who are then, or may at a future time, be affected by the powers and privileges proposed to be conferred on the petitioners for the Act.

When we consider who are some of the Parliamentary Agents thus employed, no wonder what injustice, oppression, and blunders are committed in the course of our vast system of Private Bill Legislation. We willingly acknowledge that many of these Agents, though not members of the Profession, are able and respectable men; and we have no wish to disturb them; but we do earnestly remonstrate against the



admission of any other Agents in future than those who have been educated and admitted as Attorneys and Solicitors. Let it be recollected that the Houses of Parliament will possess greater security for able and respectable conduct when all the practitioners are members of the Superior Courts, and amenable at all times for any deviation from fair and honourable practice.

We have lately received a communication from which it appears, that not only unqualified persons act in parliamentary proceedings as agents, but others assume to act in the character of Solicitors in preparing, "getting up," and promoting Bills in the country before they make their appearance within the walls of Parliament.

It may not be without its use, if we avail ourselves of a statement which we have received from a respectable Solicitor in a large town where some proceedings have been carried on, which deserve to be brought to the notice of the Profession, in order that similar cases may be watched and, we trust, prevented. Our Correspondent addresses us to the following effect :—

*To the Editor of the Legal Observer.*

SIR,—The remarks in a late Number of your useful Publication on parliamentary fees and expenses, induce me to request your attention, and, through your medium, that of the Profession, to the very unsatisfactory state of Parliamentary Agency, which is entirely at variance with the system adopted by every other tribunal in this country for securing a well-regulated effective staff of practitioners.

It will scarcely, sir, be credited, that at this time, any Attorney's Clerk, any person having no legal knowledge whatever, may set his name down in the Speaker's book, and constitute himself a Parliamentary Agent; all that is required of him being, that he shall be held responsible for the fees in any business he conducts. I ask, is this right? is it due to the Public, that any man thoroughly ignorant, perhaps having some private interest at hand, should thus be allowed to claim participation in by far the most profitable and responsible branch of practice? When we see how greatly the public appointments, formerly held by Solicitors, are now monopolised by young Barristers who have not been trained up to the duties they thus undertake, I ask, is it not time the Solicitors, through the Members of Parliament and through their Law Societies, should claim that this important duty be confided to authorised practising Solicitors?

There has, within the last month, been an instance in this town showing how unfairly, and to the Public injuriously, the present system works. The Local Board of Health, or rather a portion of them, decided to have an Improvement Act,—they employed no Solicitor, but confided the preparation of the Bill to a Select Committee, who again confided it to two or three of their members engaged in trade, and to the Clerk of the Board, formerly a writing clerk to an Attorney, and they, with the assistance of a very respectable firm acting as Parliamentary Agents, but I believe not one of them Solicitors, concocted a Bill, which was presented and read a first time. Of course, in a Bill affecting the inhabitants of an important town, various bodies and individuals found their rights and interests interfered with, and when they inquired who was the responsible Solicitor, to whom they could refer and discuss their complaints, they were told there was none, and were referred to the Parliamentary Agents, who could have no necessary local knowledge to qualify them to enter upon the subject. The consequence would have been that every one of these parties would have been driven to the expense of a petition, in order to secure consideration in the Committee, had not the Bill, fortunately for them, and perhaps more so for its compilers and promoters, been withdrawn.

Hoping, sir, the insertion of these remarks may lead to some notice of the subject, and ultimately to a remedy, I am yours faithfully,

AN OLD SUBSCRIBER.

#### LORD ST. LEONARDS' PURCHASERS' PROTECTION BILL.

THIS Bill, for the better Protection of Purchasers against Judgments, Cases of *lis pendens*, and Life Annuities, or Rent Charges, should be considered by the Profession, and we therefore place it fully before our readers.

It recites the 1 & 2 Vict. c. 110; the 2 & 3 Vict. c. 11; the 3 & 4 Vict. c. 82; and the 13 & 14 Vict. 43, s. 24; and proposes to enact as follows:

Unregistered judgments of Common Law Palatine Courts obtained before 1 & 2 Vict. c. 110, to be registered within limited time; s. 1.

Certain provisions of 1 & 2 Vict. c. 110, extended to Common Law Palatine Courts, and to Equity Court of Durham; s. 2.

*Lord St. Leonards' Purchasers' Protection Bill.*

Certain provisions of 2 & 8 Vict. c. 11, and 3 & 4 Vict. c. 82, extended to Common Law and Equity Courts of Counties Palatine; s. 3.

Protection afforded to purchasers against judgments by 3 & 4 Vict. c. 82, extended; s. 4.

Purchasers protected against judgments not re-registered; s. 5.

Provisions for re-registration explained; s. 6.

Judgments of inferior Courts, when removed, shall be registered; s. 7.

Extinguished judgments not revived; s. 8.

Duties of prothonotary; s. 9.

Life annuities and rent charges not to affect lands as to purchasers, &c., until memorandum left with Senior Master; s. 10.

Exceptions of annuities given by will; s. 11.

The clauses are as follow:—

1. Any judgment of the Court of Common Pleas of the County Palatine of Lancaster, or of the Court of Pleas of the County Palatine of Durham, obtained before the coming into operation of the said Act of the 1 & 2 Vict., and not already registered in the said Courts respectively under the provisions of the same Act, and which shall not be registered in the said Courts respectively under the same provisions as amended by this Act, on or before the 1st November, 1855, shall not after that day affect any lands, tenements, or hereditaments in the said Counties Palatine respectively as to purchasers, mortgagees, or creditors, unless and until such memorandum or minute of such judgment as is in the said Act prescribed shall be left with the prothonotary of the Court in which the judgment has been obtained, who shall forthwith enter the same in manner by the same Act as amended by this Act directed in regard to judgments thereby authorised to be registered, and shall be entitled for every such entry to the sum of 2s. 6d.; and the provision for re-registration, toties quoties, hereinafter mentioned, as explained by this Act, is hereby extended and applied, *mutatis mutandis*, to judgments registered under this present provision.

2. And be it declared and enacted as follows: The provisions contained in the sections of the said Act of the 1 & 2 Vict. numbered respectively 19, 19, and 20, giving to certain rules of Courts of Common Law, and decrees and orders of Courts of Equity, the effect of judgments in the Superior Courts of Common Law, and constituting the persons therein mentioned judgment creditors, and giving to Courts of Equity the powers by the same Act given to the Judges of the said Superior Courts, and giving to the persons so constituted judgment creditors as aforesaid such remedies as are therein mentioned, and authorising the

registration of such decrees, orders, and rules as aforesaid, and providing for the writs to be sued out of Courts of Equity, shall extend and are applicable, *mutatis mutandis*, to the said Counties Palatine and the Courts of Common Law thereof respectively, and to the Court of Chancery of the County Palatine of Durham, within the limits of their respective jurisdictions, to the end that the same law in the respects aforesaid may apply to the Courts of the said County Palatine, and the decrees, orders, judgments, and rules thereof, so far as relates to lands, tenements, and hereditaments in the said Counties Palatine respectively, as under the previous Statutes, as amended by this Act, will regulate the operation of judgments in the Superior Courts of Common Law. But no judgment shall bind lands, tenements, and hereditaments in the said Counties Palatine respectively, as against purchasers, mortgagees, or creditors, unless and until such memorandum or minute of such judgment shall be left with the prothonotary of the Palatine Court in which are situated the lands, tenements, and hereditaments intended to be charged with such judgment.<sup>1</sup>

3. The provisions contained in the sections of the said Act of the 2 & 3 Vict. c. 11, numbered respectively 3, 4, 5, and 7, and in the section of the said Act of the 3 & 4 Vict. c. 82, numbered 2, respecting the particulars to be inserted in the register by the Master, and respecting the re-registration of the judgments, decrees, or orders, and rules, and respecting the registration and re-registration of lis pendens, and respecting the protection of purchasers, mortgagees, and creditors, as explained or amended by this Act, shall extend and are applicable, *mutatis mutandis*, to the Counties Palatine and the Courts of Common Law and Courts of Chancery thereof respectively, within the limits of their respective jurisdictions.

4. And whereas the protection afforded to purchasers, mortgagees, and creditors, by the said Act of the 3 & 4 Vict. c. 82, against judgments, decrees, orders, or rules not duly registered, any notice thereof notwithstanding, is confined to judgments, decrees, orders, or rules binding by virtue of the said Act of the 1 & 2 Vict.: And whereas the docket or register previously in use has been closed, and the said provision ought not to be so restricted: Be it therefore enacted, That no judgment, decree, order, or rule which might be registered under the said Act of the 1 & 2 Vict. shall affect any lands, tenements, or hereditaments, at Law or in Equity, as to purchasers, mortgagees, or creditors, unless and until such a memorandum or minute as in the said Act in that behalf mentioned shall have been left with the proper officer of the proper Court, any notice of any such judgment, decree, order, or rule to such purchasers, mortgagee, or creditor in anywise notwithstanding.

<sup>1</sup> The passages in italics were added in Committee.

5. And whereas it is expedient that certain doubts which have arisen upon some of the provisions for the protection of purchasers against judgments in the said Acts contained should be set at rest: Be it therefore declared and enacted as follows: The provision contained in the section numbered 2 of the said Act of the 3 & 4 Vict. extends and shall be deemed to extend as well to the Act therein referred to as to the section numbered 4 of the said Act of the 2 & 3 Vict., as explained by this Act, so that notice of any judgment, decree, order, or rule, not duly re-registered, shall not avail against purchasers, mortgagees, or creditors, as to lands, tenements, or hereditaments:

6. Where by the said Act of the 2 & 3 Vict. re-registrv of judgments, decrees, orders, or rules is required within such period of five years as is therein mentioned, in order to bind purchasers, mortgagees, and creditors, it shall be deemed sufficient to bind such purchasers, mortgagees, and creditors if such a memorandum or minute as was required in the first instance is again left with the senior Master of the Common Pleas within five years, as directed by the said last mentioned Act, although more than five years shall have expired by effluxion of time since the last previous registration before such last-mentioned memorandum or minute was left, and so *toties quoties* upon every re-registrv.

7. Where by the section numbered 22 of the said Act of the 1 & 2 Vict. power is given to remove the judgments, rules, or orders obtained in or made by certain inferior Courts into the said Superior Court, or into the Court of Common Pleas of Lancaster, as the case may be, no such judgment, rule or order which has already been or hereafter shall be so removed shall bind any lands, tenements, or hereditaments as to purchasers, mortgagees, or creditors, unless and until after such removal it shall be registered, and, if necessary, re-registered, in like manner as in order to bind such purchasers, mortgagees, or creditors it must have been if originally entered up in one of the said Superior Courts, or in the said Court of Common Pleas of Lancaster, as the case may be; but from and after the passing of this Act every such proceeding, rule, or order so registered, and, where necessary, re-registered, shall be binding in like manner, but not further or otherwise, as other judgments of the said Superior Courts or of the said Court of Common Pleas of Lancaster respectively, and the proviso at the end of the said section 22 restricting the operation of the same is hereby repealed.

8. Nothing herein contained shall extend to revive or restore any judgment which shall be extinguished or barred, or to affect or prejudice any such judgment, or any decree, order, or rule, as between the parties thereto, or their representatives, or those deriving as volunteers under them.

9. For the purposes of any registration or re-registration to be made in pursuance of this

Act in either of the said Counties Palatine, al such Acts and things as under the provisions of the said several Acts of the reign of her Majesty ought to be done by or left with the senior Master of the Court of Common Pleas at Westminster shall be done by or left with the Prothonotary or Deputy Prothonotary of the Court of Common Pleas of the County Palatine of Lancaster, or of the Court of Pleas of the County Palatine of Durham, as the case may require, or such other officer (if any) of the same Courts respectively as may for the time being have been appointed by the same Courts respectively for the purpose of entering the judgments thereof respectively, under the provisions of the said Act of the 1 & 2 Vict. c. 110; and the said Prothonotary, Deputy Prothonotary, or other officer as aforesaid shall be entitled to the sum of 2s. 6d., and no more, for the duties to be performed on every registration, and the sum of 1s. only for re-registration; and all persons shall be at liberty to search the several books kept in pursuance of any of the foregoing provisions of this Act in each Court, for the sum of 1s.

10. And whereas by reason of the repeal in the last Session of Parliament of the Act of the 53 Geo 3, c. 141, requiring the enrolment of life annuities or rentcharges, purchasers are no longer enabled to ascertain by search what life annuities or rentcharges may have been granted by their vendors or others: Be it therefore enacted by the authority aforesaid as follows: Any annuity or rentcharge which has been already granted, otherwise than by marriage settlement, for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, but is not now enrolled in the High Court of Chancery, shall not, after the 1st day of June, 1856, and any such annuity or rentcharge which shall be hereafter granted in manner aforesaid shall not hereafter affect any lands, tenements, or hereditaments as to purchasers, mortgagees, or creditors, unless and until a memorandum or minute containing the name, and the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the date of the deed, bond, instrument, or assurance whereby the annuity or rentcharge is granted, and the annual sum or sums to be paid, shall be left with the senior Master of the Court of Common Pleas at Westminster, who shall forthwith enter the particulars aforesaid in a book in alphabetical order by the name of the person whose estate is intended to be affected by the annuity or rentcharge, together with the year and the day of the month when every such memorandum or minute is so left with him, and he shall be entitled for every such entry to the sum of 2s. 6d., and all persons shall be at liberty to search the same book, together with the other books or registers in the office, on payment of the sum of 1s.

11. The provisions of this Act shall not extend to require the registry of annuities or rentcharges given by will.

## NOTICES OF NEW BOOKS.

*The Law relating to India and the East India Company, with Notes and Appendix.* Fifth Edition, 4to. London: W. H. ALLEN & Co. 1855. Pp. 563.

THE preface to this new edition of the *Laws of India and the East India Company*, justly states that—

“On the first appearance of the volume, many years since, it secured the approbation of the Legal Profession in this country; and it has constantly been consulted by its most eminent members in all branches, whenever information was sought on the peculiar portion of the law to which it relates. Every successive edition has been subjected to a rigorous system of revision; and that now presented may fairly lay claim to the character of a new work. The great changes which, within the last few years, have been made in the law have contributed to this in some degree; but much more has been effected by the introduction of an increased number of notes, historical, explanatory, and illustrative. By these the laws passed at different times, under different influences, and with different views, are connected with each other in a manner which throws no inconsiderable light on the history of the government of India at home and abroad. The reader has thus before him, not a mere lifeless string of Acts, or parts of Acts, but such an exhibition of the state of the law as falls little short of an historical digest.

“It will probably be observed that some parts of the law, as that relating to the Customs Duties, received into former editions, have been omitted from this. The exclusion took place on the suggestion of very high authority, it being considered that the matter in question increased the bulk of the volume without adding proportionately to its utility or value. This, it is believed, will be the opinion of most persons who have occasion to consult the work, which now corresponds more faithfully than heretofore with its title, ‘*The Law relating to India and the East India Company.*’”

The collection is brought down to the close of the last Session of Parliament, and has been very carefully edited.

The Act passed on the 20th August, 1853, “to provide for the Government of India,” 16 & 17 Vict. c. 95, it will be recollected, made several most important alterations in the constitution and powers of the Court of Directors. The Editor of

the present volume, thus sums up their effect:—

“The twelve sections following effect important alterations in the law as to the election or appointment of directors, their number, qualifications, term of service, and other particulars. By the Charter of William the Third, there were to be twenty-four directors, thirteen or more to constitute a Court for the transaction of business; such directors to be elected annually by the members of the company, and each director to be possessed of at least 2,000*l.* stock. By the Act known as the ‘Regulating Act,’ 13 Geo. 3, c. 63, some alterations as to the qualifications of voters were made; the number of twenty-four directors was retained, but instead of the whole being elected annually, six only were to be chosen in each year to serve for four years, at the expiration of which term the retiring six were to be incapable of re-election until the lapse of one year. This state of the law continued until the present Act came into operation. By this Act it will be seen that the number of directors is reduced from twenty-four to eighteen; that of these, three in the first instance, and eventually six, are to be nominated by the Crown; that ten directors are sufficient to form a Court; that the signatures of three specified members of the Court or of two of them duly countersigned are to have the effect of the signatures of the majority previously required by a bye-law of the company; that the term of service for each director, whether elected by the proprietors or appointed by the Crown, will, when the Act shall come fully into operation, be six years; that directors having completed this term are to be immediately eligible for re-election or re-appointment; that all directors appointed by the Crown must have resided ten years in India in the service either of the Crown or of the company, and that six of those to be elected by the proprietors must also have resided in India ten years, no such condition having previously been required; that the stock qualification for a director is reduced from 2,000*l.* to 1,000*l.*; that elections are to be biennial instead of annual, and that a new oath is substituted for those formerly administered to the directors.”

All appointments of members of the Council of India are now to be approved by her Majesty. Previously to this Act the Court of Directors appointed absolutely, except in the cases of the fourth member of the Council. A new provision is also made by

which Legislative Councillors are added to the Council of India for making laws and regulations; but such Legislative Councillors are to vote only at meetings for making laws and regulations. Power is also given to appoint new Commissioners in England to consider and report on the reforms proposed by the Indian Law Commissioners.

The collection comprises not only all the recent Statutes which directly relate to India, like the one just quoted, and the Letters' Patent Act, 17 & 18 Vict. c. 77, but various other Acts bearing upon the laws of India. Amongst others the Merchant Shipping Acts 17 & 18 Vict. cc. 104, 120; the Militia Acts; the Navy; Mutiny; and the Common Law Procedure Act relating to Oaths and the Charitable Trusts Act.

The volume contains also the Acts passed by the Governor-General of India in Council. We may notice amongst those the Act for the Appointment of an Administrator-General of the Estates of British Subjects dying Intestate, passed on the 7th April, 1849, and the Act of June 6th, 1851.

The object of this latter Act is to be effected by transferring to the account of the East India Company, for the general purposes of Government, the net proceeds of all estates under the control of the registrar on the 1st January, 1836, and which remained unclaimed in the custody of the Administrator-General at the time of passing this Act, and also the net proceeds of all estates which should subsequently continue in his custody unclaimed for 15 years. Out of these funds satisfaction is to be made of the claims established against Sir Thomas Turton, as Registrar of the Ecclesiastical Court. The home authorities having disallowed part of the Act relating to certain claims set forth in schedules attached to a report to the Supreme Court of Fort William by Commissioners appointed by the said Court, so much of the Act was repealed by Act No. 13 of 1851.

An important amendment has also been made relating to civil suits where the parties are of different religious persuasions. This Act passed on the 11th April, 1850, and is as follows:—

"Whereas it is enacted by section 9, regulation 7, 1832, of the Bengal Code, that 'whenver in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindoo and the other of the Mahomedan persuasion: or where one or more of the parties to the suit shall not be either of the Mahomedan or Hindoo persuasions; the laws of those religions shall not be

permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled;' and whereas it will be beneficial to extend the principle of that enactment throughout the territories subject to the Government of the East India Company, it is enacted as follows:—

"I. So much of any law or usage now in force within the territories subject to the Government of the East India Company, as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by royal charter within the said territories."

The following Act was also passed on the 15th April, 1853, relating to assaults, forcible entries, and other injuries:—

"I. The provisions of the said Act of the 53 Geo. 3, and of Act IV. 1843, so far as the said provisions extend to cases of assault forcible entries, or other injuries accompanied with force, not being felonies, against the person or property of any native of India, are hereby extended to the case of any assault, forcible entry, or other injury accompanied with force, not being felony, which may at any time hereafter be committed in any part of the territories under the government of the East India Company, not being within the said towns of Calcutta or Madras, the said islands of Bombay and Colaba, or the said settlement of Prince of Wales' Island, Singapore, and Malacca, by any British subject or other person, against the person or property of any person whatever.

"II. The powers in such cases given to the magistrate of the zillah or district, may be lawfully exercised by any joint magistrate or other person lawfully exercising the powers of a magistrate, in the case of any such offence as aforesaid, which may hereafter be committed within the district over which his authority extends."

## PARLIAMENTARY REPORTS AND RETURNS.

### TITHES COMMISSION.

THE following is the Commissioners' Report of the progress of the Commutation of Tithes in England and Wales, to the close of the year 1854:—

|                                   |              |
|-----------------------------------|--------------|
| The number of agreements received |              |
| was                               | 7,070        |
| Of these, were confirmed          | 6,778        |
| And superseded by awards          | 290          |
|                                   | <u>7,068</u> |
| Leaving actually in progress      | <u>2</u>     |

|  |               |
|--|---------------|
| The number of drafts of compulsory awards received, was . . . . .  | 5,602         |
| Of these, were confirmed . . . . .   | 5,417         |
| And superseded by agreement . . . . .  | 164           |
|  | <u>5,581</u>  |
| Leaving actually in progress . . . . .   | 21            |
|  | <u>12,195</u> |
| The number of agreements and awards confirmed, was therefore . . . . .                                     | 12,195        |
| The tithe districts in which the rentcharges have been disposed of by merger or redemption, were . . . . . | 387           |
| The number of apportionments received . . . . .  | 11,762        |
|  | <u>12,149</u> |
| Leaving as the number of tithe districts in which rentcharges remain disposed of . . . . .                 | 46            |
|  | <u>198</u>    |
| The number of applications for the redemption of rentcharge received, was . . . . .                        | 198           |
| Of these, were confirmed . . . . .   | 184           |
|  | <u>14</u>     |
| Leaving in progress . . . . .  | 14            |
|  | <u>11,762</u> |
| The number of apportionments received, was . . . . .   | 11,762        |
| Of these, were confirmed . . . . .   | 11,751        |
|  | <u>11</u>     |
| Leaving in progress . . . . .  | 11            |
|  | <u>1,260</u>  |
| The number of altered apportionments received, was . . . . .   | 1,260         |
| Of these, were confirmed . . . . .   | 1,052         |
|  | <u>208</u>    |
| Leaving in progress . . . . .  | 208           |
|  | <u>574</u>    |
| The number of applications for exchange of glebe lands received, was . . . . .                             | 574           |
| Of these, were confirmed . . . . .   | 548           |
|  | <u>26</u>     |
| Leaving in progress . . . . .  | 26            |
|  | <u>13,946</u> |
| The number of mergers of tithe or rentcharge received, was . . . . .                                       | 13,946        |
| Of these, were confirmed . . . . .   | 13,943        |
|  | <u>3</u>      |
| Leaving in progress . . . . .  | 3             |

## LAW OF ATTORNEYS AND SOLICITORS.

### TAXATION OF MORTGAGEES' SOLICITOR'S COSTS BY SECOND INCUMBRANCERS.

CERTAIN estates were mortgaged with power of sale to three trustees (one of whom, Mr. Tourle, was a solicitor), to secure 7,700*l.* and interest, and a subsequent mortgage was made to the trustees of the Norwich Union Reversionary Interest Society. In February, 1849, Mr. Tourle wrote to the petitioner, Mr. John Taylor, that the trustees had determined on filing a bill of foreclosure, and that if he would act

as his agent in the matter he should be happy to name him to the trustees. In reply, the petitioner wrote that if Mr. Tourle entrusted the matter to his management, he should have no objection to act for the trustees in the way proposed, upon which Mr. Tourle wrote that he should be happy to entrust the matter to Mr. Taylor on the terms proposed. The proceedings by foreclosure were, however, abandoned, and the property was sold under the power of sale, Mr. Taylor acting as solicitor for the trustees. After the completion of the sales, he delivered his bill of costs, amounting to 343*l.* 10*s.* 4*d.*, which was approved of and paid. The trustees paid the balance of the proceeds into Court under the 10 & 11 Vict. c. 96, after retaining the amount of their principal, interest, and costs. An account of the monies arising from the sales and the deductions for costs, &c., was delivered, with a copy of the bill, to the solicitor of the second mortgagees, who obtained a special order for its taxation. It appeared that Mr. Taylor had paid Mr. Tourle 100*l.* in respect of his share of the profits.

The Taxing-Master taxed the bill at 167*l.* 18*s.* 7*d.* upon the agency principle, whereupon this petition of appeal was presented for liberty to except to the certificate of the Taxing-Master.

The Master of the Rolls said:—“This is an application by way of appeal from the decision of the Taxing-Master, complaining of the principle upon which he has taxed the petitioner's bill.

“The petitioner was the solicitor of three gentlemen, who were trustees and first mortgagees of an estate belonging to a gentleman of the name of Sturgeon.

“The first mortgagees being paid off, the respondents, who were interested in the equity of redemption, obtained, under the 39th section of the Act of 6 & 7 Vict. c. 73 (usually called the third party clause), the usual order to tax the bill due to the petitioner, in respect of his employment as solicitor by his clients, the mortgagees. The Taxing-Master has taxed this bill on the principle on which it would be taxed, where a solicitor had done business as the agent for another solicitor. The petitioner insists that this bill ought to have been taxed as between solicitor and client. It is settled by several cases, that when a bill is taxed under this clause it is taxed as between the solicitor and the person who employed him, and, consequently, in the absence of any special agreement, as between solicitor and client. The words of the clause itself are ambiguous. The person ultimately liable to pay the bill, but not chargeable with it, is entitled to the same reference and order, and the same course in all respects is to be pursued, as if the application had been made by the person chargeable with

the bill. In this case, it is contended, that a special agreement existed, which restricts to agent's charges the amount which the trustees and first mortgagees were bound to pay to their solicitor, the petitioner. This agreement is contained in a correspondence, consisting of three letters which passed between one of the trustees and the petitioner. The circumstances under which they were written were as follows:—One of the three trustees and mortgagees was a gentleman of the name of Tourle, who was himself a solicitor. His two co-trustees applied to him, and requested him to act as their solicitor in the matter connected with the mortgage. He informed them, that as he was a trustee he could not act as a solicitor in the matter of the trust; and thereupon they requested him to recommend to them some other gentleman to act as their solicitor. He undertook so to do, and thereupon he wrote a letter, in the following words, to the petitioner. [*His Honour read the correspondence, the substance of which is stated above.*]

"Mr. Tourle then recommended the trustees to employ the petitioner. He accordingly acted for them, having received no other retainer than that to be found in this correspondence; and at the close of the business he sent in his bill to them, which amounted to 343*l.* 10*s.* 4*d.*, and which was duly paid by them. The petitioner thereupon paid Mr. Tourle the sum of 100*l.* on account of his half-share of the profits of the business.

"An attempt was made in the argument to show that another retainer was given to the petitioner, and that the retainer contained in this correspondence was confined to proceedings by foreclosure; but, at the hearing, I expressed my opinion to be contrary to this view of the case, and that the three letters I have read constituted the retainer, and that in them is to be found the principle upon which the petitioner undertook to do the business. I am of opinion also, that the effect of the letter is, that the petitioner was to act as the solicitor for the trustees, in the same way as if they had appointed him by a simple and ordinary retainer; and that in consideration of Mr. Tourle having obtained for him this appointment, the petitioner would pay to Mr. Tourle the same share of profits which he would have received if he had been himself employed as the solicitor, and had employed the petitioner as his agent. I think that in principle it does not differ from what would have been the case if, instead of half the profits the petitioner had engaged to pay Mr. Tourle a liquidated sum of 100*l.*, or any other sum of money, in consideration of his being so appointed. It was an agreement made for the benefit of Mr. Tourle exclusively, and not for the benefit of any other person.

"The question, in my opinion, is this, viz:—whether in these circumstances the persons interested in the equity of redemption are entitled to the benefit of this agreement? If they are, I think that the Taxing Master was right; if not, I think that the bill must be taxed as between solicitor and client.

"A few observations have removed the doubt, that in my mind, at one time, involved this case. In the first place, the agreement itself is not itself illegal or void. A solicitor may lawfully make such a contract, although it may be, that the person with whom he contracted is not to retain for his own use the advantage he sought to obtain. In the next place, it is obvious, that Mr. Tourle, being a co-trustee, could not, consistently with the principle of this Court, derive any advantage from the employment of the solicitor. If he had himself acted as solicitor, he could only have charged money out of pocket; he could have made no profit of the employment. As little, or still less, could he obtain an advantage, whether in the shape of a fixed sum or a share of the profits, from the employment of another person as such solicitor. I consider it to be also clear, that as the agreement was not void, and as the petitioner had consented to do the work, on the terms specified in his letter, he could not complain if he received no more than that for which he had stipulated. And this being so, it was, as far as he was concerned, a matter of indifference, whether Mr. Tourle or any other person obtained the benefit of the agreement entered into between them. The trustees were the persons for whom Mr. Tourle acted. He acted, therefore, as their agent, and neither in this character, nor in that of one of the co-trustees, could he make an agreement that would be for his individual benefit, not to be participated in by them. They, therefore, are the persons, who in my opinion, are entitled to the benefit of this agreement; but as they are trustees, this benefit will not accrue to them personally, but will accrue for the benefit of their *cestui que trust*. They are trustees of the estate; their first trust is to pay themselves their principal, interest, and costs, for the benefit of the *cestui que trust* of that mortgage; but this being done they hold the estate until conveyance or redemption, and all the produce arising from it for the benefit of the persons interested in the equity of redemption.

"My opinion, therefore is, that the respondents, being the persons interested in the equity of redemption, are entitled to the benefit of the agreement so entered into by Mr. Tourle, as one of the trustees and agent for his co-trustees.

"To this it is urged, the right to have the benefit of this agreement cannot be made effectual in this proceeding, but that Mr. Tourle is the person bound to make good the amount received by him, and that it cannot be got at, in a proceeding of this description. I do not, however, concur in that view of the case. An agreement was entered into by which the petitioner undertook to transact the business on agency terms; this is all that the trustees were bound to pay. In other words, my opinion is, that the trustees are entitled to have the bill of the petitioner taxed, on the principle on which he agreed with Mr. Tourle to conduct it, and that the respondents, to use the words

of the Statute, are entitled to have the same course pursued in all respects, as if the application to tax had been made by the trustees, the clients of the petitioner.

"The result is, that in my opinion the Taxing Master has come to a correct conclusion, and the petition must be dismissed." *In re Taylor*, 18 Beav. 165.

## LAW OF EVIDENCE.

### UNSTAMPED COPY OF ACT BOOK OF ECCLESIASTICAL COURT.

IN an action of ejectment by remainder men, it was necessary to show as part of their title, that one Peacock had by will conveyed a lease of the premises in question to one Hitchins, and the plaintiffs' counsel put in a copy (unstamped) of the Act Book of the Ecclesiastical Court. The Judge who presided at the trial admitted it as evidence and the plaintiffs obtained a verdict.

On a motion for a rule to enter a nonsuit, and which was refused, *Jervis, C.J.*, said—"It is admitted, that before the passing of the 14 & 15 Vict. c. 99, the Act Book would be admissible evidence to prove what was here required; and the 14th section says, that whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no Statute exists which renders its contents provable by means of a copy, any copy thereof, or extract therefrom, shall be admissible in evidence in any Court of justice, &c., provided it be proved to be an examined copy or extract, and purport to be duly certified as such." *Dorrett and others v. Meus and another*, 15 Com. B. 142.

### PRACTICE ON APPEAL FROM CERTIFICATE TO EQUITY JUDGE AT CHAMBERS.

#### REHEARING IN COURT.

UPON a reference, the chief clerk took the accounts and prepared his certificate, but before it was signed and adopted the defendant applied to the Master of the Rolls at Chambers to discharge or vary it, but upon the application being heard the certificate was adopted and signed, and afterwards filed.

On a motion to discharge or vary the certificate in Court, the *Master of the Rolls* said:—"I am not disposed in a case in which the practice is, to a certain degree, unsettled to

bind parties by a mistake which they may have fallen into as to the construction of the recent Act and orders, and I am, therefore, inclined to hear this petition. I must, however, observe, that although the Court is undoubtedly bound by the Statute, yet I find nothing in it which enables a party to have two rehearings before the same Judge. The 34th section enacts that the certificate shall be binding, unless (in the alternative) it is 'discharged or varied either at Chambers or in open Court' upon a summons or motion; but there is nothing in this section, or in the general orders, which enables a suitor, complaining of the certificate of the chief clerk, to have the matter discussed first before the Judge in Chambers, and afterwards before him in open Court. I am of opinion that a party dissatisfied with a certificate has the right to have the matter argued in open Court; but he is also at liberty to have it argued before the Judge in Chambers; but having exercised his option he is bound by it, and cannot call on the same Judge to hear the same appeal from the chief clerk's decision twice over.

"It is of great importance that the Court should prevent any abuse in the practice by the useless waste of time, and it is obvious that if this be a rehearing of the same points which have been argued before me in Chambers, it would be a rehearing of the same questions before the same Judge, and in my opinion the argument twice over of all the points arising on a report or certificate would be a serious inconvenience. The effect would be to abolish discussions in Chambers altogether, for the Judge would naturally say it is useless to have the matter discussed before me in Chambers, if it is afterwards to be argued before me in open Court. Another inconvenience is, that a party having many objections might argue only a few in Chambers, in order to test the Judge's opinion and feel his way, and afterwards bring forward in Court every other possible objection to the report or certificate.

"By the ordinary practice of the Court a party has the option of having one rehearing, and I conceive that the decision of a Judge in Chambers must be treated as of the same authority as his decision in open Court. Another objection is the delay which such a practice would occasion. By discussing the objection in Chambers the signing and approving the certificate is delayed, and thereby the matter might, in this and other cases, be thrown over the long vacation by such a proceeding.



"On every ground it appears to me highly objectionable to allow a party to discuss the same question before a Judge in Chambers and afterwards in open Court. If by accident or mistake some point happened to be overlooked or omitted, it might be proper that the practice should yield to the special circumstances; but in the absence of any special circumstances, it appears to me that it would neutralise the very object of the Statute, and lead to unnecessary delay and expense, if I allowed a party to argue the same objections to a report or certificate twice, first in Chambers and then in open Court, and until I am corrected by higher authority I shall not allow such a course to be adopted.

"The practice I have adopted is this, when a matter has been argued before and decided by me in Chambers, and a party is dissatisfied and desirous to appeal to the Lords Justices, an application is made in Court to vary the certificate, when I make an order without further argument in Court, to the effect of my decision in Chambers, which enables the parties to appeal." *York and North Midland Railway Company v. Hudson*, 18 Beav. 70.

#### BRITISH CONSUL AT PARIS.

##### INCONVENIENCE AND DELAY IN CONDUCTING FOREIGN BUSINESS.

We are informed that a change is projected in the office of the English Consul at Paris, which it appears will seriously impede the transaction of legal business, especially in the administration of oaths both in Law and in Equity, now taken under various Acts of Parliament by the English Consul. It is said that the Consulate at Paris is about to be abolished, and a Registrar to the Embassy appointed in its stead. The consequence would be, that the authentication of documents and the swearing of answers, affidavits, &c., must be effected at Rouen, the nearest place at which a Vice-Consul resides.

Our readers are aware of the great number of English residents and others in Paris, who have to make affidavits in reference to proceedings in the English Courts, and it is evident that the delay and expense in transacting business, if the change should take place, will be most serious.

It is probable that the alteration has been proposed without considering the consequences, and that when they are pointed

out the change will be abandoned. It would indeed be much to be regretted if this long-established office of Consul, so well known in our intercourse with foreign nations, and especially noticed in various Acts of Parliament, should undergo any alteration. Indeed the rumoured alteration could only be satisfactorily effected by an act of Parliament, and, of course, by due compensation to the present officer who holds his appointment for life.

The business at the English Consulate at Paris is as follows:—

1. The administering oaths on affidavits in Chancery, Common Law, and Bankruptcy, and on answers in Chancery. The proofs of debts in Bankruptcy are numerous, although such debts are sometimes only of small amount. It is evident that the commerce between the two countries is involved in the facilities afforded to creditors in France.
2. The execution of Commissions from the Ecclesiastical Courts for the examination of witnesses. The execution of requisitions for the proof of wills and obtaining letters of administration.
3. The receiving declarations relating to patents and other matters.
4. The legalisation of signatures.
5. The attestation of bank powers.
6. Life certificates for the Accountant-General and Government offices.
7. The performance of general consular duties.

Altogether, in the course of a year nearly 2,000 persons appear before the Consul.

We add the remarks of the Paris Correspondent of the *Morning Chronicle* on this subject:—

"A rumour has been current here for some days past that Mr. Pickford, who for many years has been British Consul in Paris, was about to be removed, or superannuated, by an order from the Foreign Office. Had Mr. Pickford expressed a wish to retire from the office which he has so ably filled, no one would be better entitled to consideration at head quarters, for no public servant has more faithfully fulfilled his duties. But it appears that he has made no application of the kind, and that the measure, if actually carried into effect, would be to him a matter of as great surprise as to the public. There can be no excuse or pretext for the removal of Mr. Pickford. No man can be more attentive to the duties which he has to fulfil, nor more efficient in them. It is therefore to be hoped that this measure, which must be considered not only a hardship, but an injustice to an old public servant—if contemplated at all, which perhaps it never was—will not be persisted in by Lord Clarendon."

## CURSITOR-BARON OF THE EXCHEQUER.

### ORIGIN OF THE TITLE AND OFFICE.

A LEARNED and interesting paper has been recently contributed by Edward Foss, Esq., F.S.A. to the Society of Antiquaries, in a letter addressed to Lord Viscount Strangford, F.R.S., V.P., which we think will be acceptable to our readers, bearing as it does not only on the office and duties of the Cursitor-Baron, but on many important points of the judicial history of our Common Law Courts. Our learned friend thus commences his paper:—

"I am induced to address your lordship, not so much on account of the general interest you have always taken in antiquarian researches, as presuming that, from your descent from a Chief Justice of the reign of Henry VII.,<sup>1</sup> and your possession of his Serjeant's Ring, with the first known<sup>2</sup> instance of a posy inscribed, you will have a special regard to those inquiries which relate to legal history. Your connection also with a Chief Baron of the Exchequer of the last century warrants me more particularly in calling your lordship's attention to the following observations with reference to the title of an officer of the latter Court, which I trust may be worthy of the consideration of our Society.

"Although the history of our most ancient titles and offices may generally be traced with tolerable certainty, we occasionally meet with some of more recent date, of which, though we might reasonably expect greater facility in the inquiry, no account can be discovered of the introduction or origin. The possessor of such an office is too commonly satisfied with performing its duties and receiving the stipulated salary, without troubling himself about its antecedent history; or, perhaps, while he prides himself on its extreme antiquity, pleads that as a proof of the inutility of investigation.

"The office of Cursitor-Baron of the Exchequer, for instance, is, according to the general acceptance, as old as the Exchequer itself, whether we date the introduction of that department of the State at the time of the Conquest, or in the reign of Henry I. And for this there is some semblance of probability, for the same duties which are now, or till recently were,<sup>3</sup> entrusted to the Cursitor-Baron have been performed by some officer of the Exchequer from the most distant period. It has therefore not unnaturally been presumed

that the executor of those duties in ancient times bore the same title as the officer of the present day. But if it were so, how is it that we never meet with the name of Cursitor-Baron for more than five centuries after the introduction of the Exchequer? Is it not rather extraordinary that it never occurs in any ancient record?—that it is not mentioned in the elaborate history of the Court by Madox?—and that it is not noticed in any subsequent work, with which I am acquainted, from the end of the reign of Edward II., at which Madox terminates his history, till the early part of that of James I.?

"This universal silence—especially on the part of that careful historian Madox, who gives the name, and describes the duty, of every officer of the Court, from the Chief Justiciary, who presided, down to the Pesour and the Fusour of the metal—cannot fail to create in the mind of any intelligent inquirer a strong doubt whether an officer so called then existed; and to induce him to seek for some further evidence, in the hope of finding the time when, and the reason for which, he was actually created.

"The principal duty devolving upon the Cursitor-Baron, until the recent Act of Parliament, was the examination and passing of the accounts of the sheriffs of all the counties in England. There can be no doubt that this duty was originally performed by one of the regular Barons, and that at one time they used to travel for some of the purposes connected with it. By a Statute of Edward I. it is enacted, 'that at one time certain every year, one Baron and one clerk of our said Exchequer shall be sent through every shire of England, to inroll the names of all such as have paid that year's debts exacted on them by green wax. And the same Baron and clerk shall view all such tallies and inroll them. And shall hear and determine complaints made against sheriffs and their clerks and bailiffs, that have done contrary to the premisses.'<sup>4</sup> The examination of the sheriffs' accounts was generally performed in London, and when completed the Baron and the clerk assisting him signed their names at the head. It does not distinctly appear in what order the Barons acted, but probably they at first took the duty in turn; and, as after the appointment of a Chief Baron the others were called the second, third, and fourth Baron, it then perhaps became the peculiar province of the junior of these three.

"It is therefore evident that at some period this duty was transferred from the regular Barons to a distinct officer; and in order to discover when, and under what circumstances, this probably took place, we must direct our attention to the changes that have occurred in the ancient constitution of the Court.

"In the original institution of the Exchequer, all the Judges were Lords of the land and ac-

<sup>1</sup> "Sir John Fineux, Chief Justice of the King's Bench from 11 Henry VII. 1495, to 17 Henry VIII. 1526.

<sup>2</sup> "Sue quisque fortunæ faber." Lloyd's State Worthies, 82. Notes and Queries, vii. 188.

<sup>3</sup> "By Stat. 3 & 4 Wm. 4, c. 99, some of these duties are transferred to the Commissioners for auditing Public Accounts.

<sup>4</sup> "Stat. de Finibus Levatis, 27 Edw. I. Statutes of the Realm, i. 129.

trial Barons; and until the reign of Henry III. they were indiscriminately styled '*Justiciarii et Barones*.' On the division of the Courts in that reign, the real Barons having in the meantime gradually seceded from the employment, special persons were assigned to sit in the Exchequer, '*tanquam Baro*;' thus retaining the name of Baron: and in order to distinguish their business from that of the two other Courts, from which they were now separated, their duty was expressly limited '*pro negotiis nostris quæ ad idem Scaccarium pertinent*.' One of these persons, Alexander de Swerford, had previously been a clerk in the Exchequer, and thus was fully cognizant of all the details of the Court.

"All these Barons held equal rank until the reign of Edward II., when for the first time one of them was distinguished by the title of Chief Baron.<sup>7</sup> He was sometimes selected from the Legal Profession, but the other Barons were generally men who had acquired practical knowledge of the revenue in the minor offices of the Court. They manifestly held an inferior rank to the Judges of the other Courts, and were not reckoned among them in judicial proceedings. In the Statute of Nisi Prius, 14 Edward III., it is enacted, '*that if it happen that none of the justices of the one bench nor of the other come into the county, then the Nisi Prius shall be granted before the Chief Baron of the Exchequer, if he be a man of the law*;' thus excluding the other Barons, and even the Chief Baron, unless he were a regular lawyer. The same distinction occurs in the reign of Henry IV.:<sup>8</sup> and even the rank of the Chief Baron does not seem to have been higher than that of the puisne Judges of the King's Bench and Common Pleas, if so high; since no less than seven of the Chief Barons, from the reign of Henry IV. to the middle of that of Henry VIII., held, in addition, the judgeship of one of those Courts; which two of them subsequently retained in preference to the office of Chief Baron.

"By the poll tax of 2 Richard II., though the Chief Baron is placed in the same class with the other Judges, the puisne Barons are not even named:<sup>9</sup> and in a commission in the fifth year of that reign, to inquire into the abuses of the different Courts, the Barons and great officers of the Exchequer are named *after the serjeants-at-law*.<sup>10</sup>

"Some of the Barons in the reign of Henry VI., as Nicholas Dixon, William Derby and Thomas Levesham, were in holy orders; others

were Members of Parliament, and two of them, Roger Huat, and Thomas Thorpe, were Speakers of the House of Commons; all during the time they were Barons. Fortescue also, who wrote in this reign, does not include them among the Judges; and in reference to the rings given by the serjeants on taking their degree, says that those for '*every justice*' must be of the value of '*one mark*,' while '*to each Baron of the Exchequer*,' &c., they are to be "*of a less value in proportion to their rank and quality*."<sup>4</sup>

"Under Henry VII. and Henry VIII. the same marked difference still existed; none of them being summoned as attendants on the House of Lords as the Judges of the two other benches were; nor being privileged like them to have chaplains.<sup>5</sup> But they were already advancing in legal education and entering into the Inns of Court. Several instances occur of their being members, and even readers there, after they had become Barons. But they still were selected principally from the officers of the Exchequer, and one even was raised from the inferior position of Clerk of the Pipe.<sup>6</sup>

"No change took place in the reigns of Edward VI. and Mary. One of the Barons had been engrosser of the Great Roll;<sup>7</sup> and at the serjeants' feasts their servants were not allowed liveries, though those of the Judges were provided with them. The rings of the Judges were of the value of 16s., while those given to the Barons were only 14s.;<sup>8</sup> which was still further reduced under Elizabeth to 10s.<sup>9</sup>

"There is no doubt therefore that, from the reign of Henry III. to that of Elizabeth, the Barons of the Exchequer were inferior in degree to the Judges of the two other Courts; and that in fact they were little more than superior officers of the revenue, raised to the bench on account either of their long service, or of their known aptness in the details of that department. But by degrees the business of the Exchequer had materially increased; the causes that were tried there ceased to be confined to cases of revenue, and by means of the writ of *Quo Missus* all sorts of civil actions were by a legal fiction introduced. No wonder then that the Chief Baron, who was the only lawyer among them, required some assistance to cope with this accumulation of business, and that it was found necessary to graft a little more legal learning on the bench, in order to give weight to decisions on intricate points that were daily arising.

"Accordingly in the month of June, 1579, 21 Elizabeth, two vacancies in the Court, occasioned by death or resignation, afforded the opportunity of trying the experiment. One of them was filled up in the accustomed manner

<sup>4</sup> "*Madox's Exchequer*, i. 199, 200.

<sup>5</sup> "*Ibid.* i. 54.

<sup>6</sup> "*Rot. Pat.* 5 Edw. II. p. 2, m. 17.

<sup>7</sup> "*Statutes of the Realm*, i. 287.

<sup>8</sup> "*Rot. Parliamentorum*, iii. 498.

<sup>9</sup> "*John Cockayne; William Babington; John Juy; Peter Arderne; Humphrey Starkey; John Fitz James; and Richard Broke.*

<sup>10</sup> "*Rot. Parl.* iii. 56.    "*Ibid.* iii. 102.

<sup>4</sup> "*Fortescue, de Laudibus* (Ed. 1741), 115.

<sup>5</sup> "*Statutes of the Realm*, iii. 457.

<sup>6</sup> "*Nicholas Lathell. Rot. Parl.* vi. 97.

<sup>7</sup> "*John Darnall. Dugdale's Chronicles Series*, 86.

<sup>8</sup> "*Dugdale's Orig. Jurid.* 129, 130.

<sup>9</sup> "*Ibid.* 125.

by John Sotherton, who had held the office of Foreign Apposer for 20 years; but the other was supplied by Robert Shute, as second Baron, who for the first time was selected from the serjeants-at-law; and in the patent he received was contained a special clause, ordering that 'he should be reputed and be of the same order, rank, estimation, dignity, and pre-eminence, to all intents and purposes, as any Puisne Judge of either of the two other Courts.' He was the first who was thus put on an equality with the other Judges, and was consequently privileged to go the circuits, and to hold assises as they did. John Birch, the Baron who remained in the Court at their nomination, is represented by Dugdale to have been also a serjeant; but from various circumstances, unnecessary to particularise here, I think that author has mistaken the man. The vacancy on his death, and all future vacancies in Elizabeth's reign, were supplied by serjeants; so that at the accession of James I. the whole Court consisted of men of the law, except the above John Sotherton, the fourth Baron, who was the only one left on the bench accustomed to the routine duties of the Exchequer.

"On Sotherton's retirement 18 months after James came to the Crown, George Smigg, a serjeant-at-law, was appointed; so that then the legal phalanx was complete. After 15 months, however, viz., in July, 1606, although no other vacancy occurred, another Baron, Nowell Sotherton, was added to the rest. He was not a serjeant, and, although of Gray's Inn, he is not mentioned by any of the reporters as an advocate, nor, although the names of all the other Barons occur in the books, is he ever mentioned as sitting in Court.

"In May, 1610, Thomas Cæsar, the brother of Sir Julius Cæsar, Master of the Rolls, was, according to Dugdale, appointed a Baron; and in the same author we for the first time find the designation of *Baron-Curator* used with regard to him. This entry occurs in the books of the Inner Temple on his election: 'That the said Thomas Cæsar, then being the puisne Baron of the Exchequer (commonly called the Baron-Curator), should not be attended to Westminster by any but the officers of the Exchequer; for as much as none but such as are of the coif ought to be attended by the officers of the House.' And in the following month another order was made in these terms: 'That Thomas Cæsar, then one of the Benchers of this House, notwithstanding an Act made 7th June, 5 Jac. viz.—that none who should thenceforth be called to the Bench, that had not read, should take place of any reader, or have a voice in Parliament—having not read, but fined for not reading, and then called to be puisne Baron of the Exchequer, should have place at the Bench Table, the said order notwithstanding.' These entries show,

first—that he was not a serjeant; next—that he had not attained the dignity of reader to the society; and, thirdly—that his appointment of puisne Baron, or Baron-Curator, was a new occurrence requiring a special order of the Bench; and the omission of his name by the reporters proves that he had no judicial function to perform.

"He seems to have been soon tired of his duties, and to have resigned them five months afterwards, for in October of the same year another John Sotherton of the same Inn of Court was nominated a Baron; and here is the entry in the Inner Temple books with reference to him: 'That John Sotherton, one of the Barons of the Exchequer, being called to the Bench, should have his place at the Bench Table above all the readers, in such sort as Sir Thomas Cæsar, late puisne Baron of the Exchequer, had.' Thus it is clear that he was not even a benchler at the time of his appointment; and, though the reporters of the period frequently mention all the Barons who sat in Court, they never introduce his name. From these facts it may be inferred that he held the office of Curator-Baron only; and that it was of greatly inferior grade to that of the regular Barons is proved by his name being placed in a special commission to inquire into defective titles, issued in 1622, after the Attorney-General, though two other Barons, Denham and Bromley, are inserted previous to that officer. This order of precedence again occurs in a similar commission in the next year; and in another relative to nuisances in London, in 1624, several knights and the Recorder of London intervene between the regular Barons and him."

[To be continued.]

## INLAND BOOK POST.

On and from the 1st of March next, the following alterations will be made in the regulations of the Inland Book Post.

1. If a book packet be found to contain any enclosure which is sealed, or otherwise closed against inspection, or any letter, whether sealed or not, the letter or other enclosure, will be taken out and forwarded to the address on the packet, charged with full postage as an unpaid letter, together with an additional rate of 6d., the remainder of the packet, if duly prepaid, being forwarded as heretofore.

2. If a packet be not sufficiently pre-paid according to its weight, but nevertheless bear stamps of the value of 6d., it will not, as heretofore, become liable to the letter rate of postage, but will be forwarded charged with the deficient book postage, and an addition of 6d.

(Signed) ROWLAND HILL,  
Secretary.

<sup>1</sup> "Stowe's London, 332.

<sup>2</sup> "Dugdale's Chron. Series, 94.

<sup>3</sup> "Dugdale's Orig. Jurid. 149.

<sup>4</sup> "Ibid.

<sup>5</sup> "Rymer's Fœdera, xvii. 368, 512, 540.

## MANCHESTER LAW ASSOCIATION.

### ANNUAL REPORT OF THE COMMITTEE.

THE Committee of the Manchester Law Association, in presenting to the members the Sixteenth Annual Report, have much pleasure in stating, that satisfactory evidence of continued prosperity is afforded by the increase in the number of members during the past year; and they are also happy to report that the financial condition of the Association is better than on any previous occasion since its formation. One of the earliest duties which engaged the attention of your Committee was the consideration, in the month of January last, of a series of questions submitted by the Commissioners appointed "to inquire into the state and practice of the County Courts," with respect to what alterations might advantageously be made in the Statutes and rules; and again, in the month of March, a second series of questions were submitted by that board with respect to the Common Law jurisdiction of those Courts. To both of these your Committee gave their prompt and earnest consideration, and forwarded replies to the Secretary of the Commission, and assigned the reasons on which those replies were founded. The opinion of your Committee was, at an early period of the last Session, sought as to the propriety of memorialising the Chancellor of the Exchequer for a reduction of the Stamp Duties on conveyances on chief rent; their reply was, that it was impolitic to make any endeavour to alter the scale of duties which had been imposed by the recent Act on such conveyances, except so far as to get the duty on duplicates and counterparts placed on the same footing as they were under the prior Stamp Act. On this latter point your Committee subsequently addressed the Solicitor of Stamps, and they have satisfaction in stating that the defect in the then recent Act was remedied by the insertion of provisions for that purpose in the 17 & 18 Vict. c. 83. The fears of your Committee as to the other proposition were, that if the Chancellor of the Exchequer, on being memorialised, should be disposed to entertain it, he would seek compensation to the revenue by a considerable increase in the Stamp Duties then payable on leases for a long term of years; these fears were fully realised on the proposition having been urged upon him from another quarter, and an alteration to that effect has accordingly been made by the last-mentioned Act. Your Committee directed their attention to a Bill, introduced into Parliament during the last Session, to extend the powers and jurisdiction of the Court of Record for the borough of Manchester, and to simplify and otherwise improve its practice and proceedings; they suggested to the Registrar and Deputy Registrar of that Court certain alterations in this Bill to which assent was given, and the Bill has since passed. A Bill was, during the last Session, introduced into the House of

Lords by the Lord Chancellor, having for its object the transfer to the Court of Chancery of the testamentary jurisdiction now vested in the Ecclesiastical Courts, and to alter and amend the law in matters relating to testacy and intestacy. To this subject the careful attention of your Committee and of their predecessors in office has been directed for several years past, under a conviction that no branch of the law requires more searching and thorough reform than this. The measure of the last session proposed to effect an alteration of a most comprehensive character; it received long and earnest consideration from your Committee, and a very elaborate statement, containing suggestions thereon and certain objections thereto, was sent to a member of the Legislature, with a request that he would take such steps as might be advisable for bringing them before the House. The Bill was, however, subsequently withdrawn; and your Committee have to regret that a law, as defective in the jurisdiction to which its administration is committed as it is dilatory and expensive in its practice, still remains unaltered. The attention of your Committee was, during the last session, directed to three Bills brought into the House of Commons for establishing joint-stock companies to administer private trusts: 1st. The South Sea Company; 2nd. The Executor and Trustee Society; 3rd. The National Society for the Administration of Wills and Trusts. Of these, the last scheme was soon afterwards dropped; but with respect to the two former a decided opposition was offered by the Incorporated Law Society. Your Committee entirely concurred in the reasons assigned for that opposition, and requested the attention of several members of Parliament to the objectionable provisions in these Bills, which were subsequently withdrawn. Your Committee devoted considerable attention to a Bill presented to the House of Lords by Lord Brougham, entitled "An Act to permit the Registration of Dishonoured Bills of Exchange and Promissory Notes in England, and to allow execution thereon," and also to another Bill, entitled "An Act for Preventing Frauds upon Creditors by Secret Bills of Sale of Personal Chattels." To the former they saw many objections, and conceived that its provisions would operate most prejudicially on the mercantile community; these objections they urged upon the attention of members of Parliament, and also upon the Chamber of Commerce and the Manchester Commercial Association, and they had much satisfaction in finding that the Bill did not subsequently pass. Of the Bill of Sales Bill they approved; and subject to some alterations and extension of its provisions which they sought to get inserted, they felt it would be a measure beneficial to the community. It subsequently passed, and is now the 36 cap. of the Acts of the last session of Parliament. Several other Bills introduced into Parliament during the last session claimed and received the attention of your Committee, but they were not afterwards proceeded with. Your Commit-

tee cannot conclude their report upon the measures of the last session without adverting to the Act entitled "An Act to Repeal the Laws relating to Usury and to the Enrolment of Annuities" (c. 90), and to another important Act, entitled "An Act for the further amendment of the Process, Practice, and mode of Pleading in and enlarging the Jurisdiction of the Superior Courts of Common Law at Westminster, and of the Superior Courts of Common Law of the Counties Palatine of Lancaster and Durham" (c. 125). It is hoped that both of these measures will be beneficial to the community; and with respect to the latter especially it cannot be doubted that great facilities are given by it for the recovery of claims at law which were not before possessed, and that, too, in a manner more expeditious and less expensive than heretofore; it moreover introduces the new feature of giving to the Courts of Common Law power, in certain cases, to grant injunctions. Your Committee took into their consideration, at the request of a member, the expediency of recommending to the Profession the adoption of a rule that the fees properly chargeable by Commissioners on administering oaths and taking affirmations and statutory declarations be made the subject of actual charge, and not be remitted as heretofore; they felt that the adoption of this rule was due to their younger brethren, whose services for this purpose were frequently called for gratuitously by members more extensively employed, and that such payment was also more in conformity with strictly correct practice, and they consequently agreed upon a resolution recommending the rule, and caused a copy of it, together with a scale of fees, to be sent to every member of the Profession within the limits of the Association. It came to the knowledge of your Committee, in the month of May last, that an agent, and collector of debts, of the name of Thomas Dawson, whose office was in Brown Street, in this city, had, on receiving a debt, demanded payment also for the costs of a writ alleged by him to have been issued out of the Manchester Court of Record; that on payment of the claim, a separate receipt was, at the special request of the debtor, given for the costs of the writ, and that on inquiry from the Deputy Registrar of the Court, it had been ascertained that no such writ was issued. Your Committee felt that not only did this case deserve exposure, but, having been also informed that other agents were in the habit of adopting a similar practice, they conceived themselves warranted in proceeding with promptitude and vigour against the offender, as a warning to others as well as a punishment to himself; they accordingly caused him to be apprehended on a warrant; he was committed on a charge of obtaining money under false pretences, and was subsequently sentenced at the Sessions to two months' imprisonment. Your Committee have to report that a deputation from this Society attended an aggregate meeting of the members of the Metropolitan and Provincial Law Association,

which was held at Leeds on the 16th of October last. At that meeting a review of the position of the Profession—of the state of the law both as it affects its members and the public generally and a consolidation of plans for the future, with a view not only to the correction of many existing defects in the law, but also of increasing the intelligence and elevating the status of the Profession,—formed subjects of much interest and information; and expectations exist that similar meetings will henceforth be held annually at some selected place in the provinces, at which, as heretofore, many metropolitan and country practitioners will attend. Your Committee in conclusion, regret that, in consequence of Mr. John Speakman joining a firm at a distance from Manchester, the Association has been deprived of his valuable and efficient services as honorary secretary. It gives them, however, much satisfaction to state that Mr. Francis Marriott has been unanimously appointed his successor, and has consented to undertake the onerous duties of the office.

In our next Number we shall endeavour to give a report of the Speeches at the Annual Dinner of the members of the Association.

## WOLVERHAMPTON LAW ASSOCIATION.

### REPORT OF THE COMMITTEE, 1854.

Your Committee have during the past year had no subject of importance affecting the interests of the Profession brought before them, with the exception of the South Sea Trust Bill, against which they were requested by the Metropolitan and Provincial Law Association to petition, a step, which your Committee, considering the way in which petitions to Parliament from the Profession are universally treated, were of opinion, would if anything assist in carrying the Bill, they consequently declined to comply with the Metropolitan and Provincial Law Association's request. Your Committee perceived with pleasure the rejection of this measure, which had it been carried could not have been but highly injurious to the Profession generally.

It is with pleasure that your Committee have to report that in no one instance have they been called upon to investigate disputes between members of the Association. The fact of a gentleman practising without his certificate having been brought under your Committee's consideration, they referred the matter to the Incorporated Law Society, at the same time instructed their secretary to call the attention of Mr. Serjeant Clarke, the Judge of the Local County Court, before whom, the gentleman in question frequently appeared as an advocate, to the circumstance, and requested him to direct the clerk of the Court to furnish the Society with a list of the cases in which the gentleman alluded to, had been engaged, and also

to prohibit his appearing as an advocate until he had obtained his certificate. Your Committee regret that Mr. Serjeant Clarke refused to grant the application relative to the list of cases, and also the desired prohibition, and particularly his observation that it was immaterial to him whether attorneys practising as advocates in his Court had certificates or not, so long as they did not misconduct themselves.

Your Committee have to regret the resignation and subsequent decease of the eldest member of the Society, and also the resignation of two of the honorary members in consequence of their removal from the neighbourhood.

Your Committee have recommended a new arrangement of the library, which is now being carried out under the supervision of their Chairman and the Secretary, they have likewise suggested that a new catalogue should be made, and the same gentlemen have been deputed to undertake its preparation.

"Your Committee have had their attention called to the want of practical works in the library, and are only waiting for the report of the Chairman and Secretary as to what reports are required to complete the present series before ordering such works as they may deem requisite to supply this deficiency.

The members of the Committee who retire from office and are ineligible for re-election under rule 8, are Mr. Deakin, Mr. Manby, and Mr. Rutter.

Upon the financial position of the Society, your Committee beg to congratulate you.

## ORDERS OF THE HOUSE OF LORDS.

### AS TO PRIVATE BILLS.

THAT this House will not receive any petition for a private bill after *Monday*, the 19th day of *March* next, unless such private bill shall have been approved by the Court of Chancery; and the House will not receive any petition for a private bill approved by the Court of Chancery after *Tuesday*, the 22nd day of *May* next.

That this House will not receive any report from the Judges, upon petitions presented to this House for private Bills, after *Tuesday*, the 22nd *May* next.

5th February, 1855.

That no private Bill shall be read a second time after *Tuesday* the 10th day of *July* next; that no Bill confirming any provisional order of the Board of Health, or authorising any enclosure of lands under special report of the Enclosure Commissioners for England and Wales, shall be read a second time after *Tuesday* the 17th day of *July* next; that when a Bill shall

have passed this House with amendments these orders shall not apply to any new Bill sent up from the House of Commons, which the Chairman of Committees shall report to the House, is substantially the same as the Bill so amended.

20th February, 1855.

## APPEALS BEFORE THE LORDS JUSTICES.

### ENTRY OF CAUSES.

THE Lords Justices direct that no appeal motion be placed in the paper for hearing before them, unless it shall have been previously entered in the book kept for that purpose at the Registrar's Office; and the solicitor is to leave with the Registrar's clerk a copy of the notice of such appeal motion as his authority for making such entry.

(Signed) CECIL MONRO, Registrar.  
February 19, 1855.

## PROFESSIONAL LISTS.

### PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recoveries Act, with dates when gazetted.*

Borall, Edwin, Brighton, in and for the county of Sussex. Feb. 16.

Hearn, Thomas Bayley, Ryde, Isle of Wight, in and for the county of Southampton. Feb. 12.

Houchen, John, jun., Thetford, in and for the county of Norfolk. Feb. 6.

Robinson, George Lockett, Longton, in and for the county of Stafford. Feb. 6.

### COUNTRY COMMISSIONER TO ADMINISTER OATHS IN CHANCERY.

*Appointed under the 16 & 17 Vict. c. 78, with date when gazetted.*

Prangley, John Pearce, Heytesbury, Wilts. Jan. 30.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 23rd January to 19th February, 1855, both inclusive, with dates when gazetted.*

Freeman, Lake, and Thomas Hilton Bothamley, 39, Coleman Street, City, Attorneys and Solicitors. Jan. 30.

Richardson, John Cressey, and Matthew Cressey Lee, Kingston-upon-Hull, Attorneys, Solicitors, Scriveners, and Conveyancers. Feb. 2.

Walker, William, jun., and Charles Walker, Kingston-upon-Thames, Berrylands, Surbiton Hill, and 46, Churton Street, Belgrave Road, Finsbury, Attorneys and Solicitors. Jan. 30.

## NOTES OF THE WEEK.

## NEW MEMBERS OF PARLIAMENT.

Sir George Cornwall Lewis, Bart., for New Radnor, in the room of the Right Honourable Sir Thomas Frankland Lewis, Bart., deceased.

Samson Ricardo, Esq., for New Windsor, in the room of Charles Wellesley (commonly called Lord Charles Wellesley), who has accepted the office of Steward of her Majesty's Manor of Hempholme.

## LAW APPOINTMENTS.

The Queen has been pleased to grant the office of her Majesty's Solicitor-General for Scotland, to Edward Francis Maitland, Esq.,

Advocate, in the room of Thomas Mackenzie, Esq., appointed one of the Lords of Session in Scotland.

Her Majesty has been pleased to appoint William Henry Doyle, Esq., Barrister-at-Law, to be a Member of the Executive Council of the Bahama Islands.—From the *London Gazette* of Feb. 16.

## SCOTCH LAW APPOINTMENT.

The Queen has been pleased to appoint Thomas Cleghorn, Esq., Advocate, to be Sheriff of the Shire or Sheriffdom of Argyll, in the room of Edward Francis Maitland, Esq., resigned.—From the *London Gazette* of Feb. 20.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Master of the Rolls.

*Loveell v. Galloway.* Jan. 16, 1855.

BILL OF DISCOVERY.—MOTION FOR AN INJUNCTION. — COSTS OF UNSUCCESSFUL OPPOSITION.

*A bill was filed by a defendant at law for a discovery only, and the motion for an injunction was opposed unsuccessfully by the plaintiff at law who filed affidavits. The injunction was granted and the costs reserved: Held, that upon answering the plaintiff at law was not entitled to any costs of the motion, but that in future such unsuccessful opposition would be visited with costs.*

THIS bill was filed by the defendant to an action at law for a discovery only, and on a motion for an injunction the plaintiff at law filed affidavits in opposition, but the injunction was granted and the costs reserved (reported 17 Beav. 1). The plaintiff at law having answered now moved to dissolve the injunction and for his costs.

Roupell, R. Palmer, W. Hislop Clarke, and Bruce for the several parties.

The Master of the Rolls said, that if the defendant in equity had filed no affidavits, the costs of the motion for the injunction would have been costs in the cause, and he would have got them. But as he had improperly opposed, no costs would be given of the motion, and he would have his costs of the cause only. In future, however, the costs of an improper opposition must be paid by the defendant, if unsuccessful.

## Vice-Chancellor Kindersley.

*Callender v. Teedale.* Feb. 16, 1855.

PAYMENT OF DIVIDENDS TO WIDOW WITHOUT ADMINISTERING TO HUSBAND.

Order on petition for the payment out of

*Court of the dividends on 13l. stock, to which the petitioner's husband, who had died intestate, was entitled, without administration being taken out.*

THIS was a petition for the payment out of Court of the dividends on a sum of 13l. stock, to which the husband of the petitioner was entitled, without her being compelled, upon his having died intestate, to take out letters of administration.

Smyth, in support, cited *In re Woodroffe* (V. C. S., July, 1854).

The Vice-Chancellor made the order accordingly.

*In re Schofield.* Feb. 16, 1855.

TRUSTEES' ACT, 1850.—VESTING ORDER ON DEATH OF TRUSTEES IN DEVIEN.

*A testator devised estates in Canada in trust for sale, and directed the proceeds to be transmitted to his country for the absolute use of R., who, however, died before all the estates were sold, devising all his property to the petitioner. Upon the death of the two trustees of the testator's will and the heir of the survivor being in Scotland, a vesting order was made under the 13 & 14 Vict. c. 60, vesting the legal estate of the unsold lands in the petitioner.*

THIS was a petition for a vesting order under the 13 & 14 Vict. c. 60, to vest in the petitioner the legal estate in certain estates in Canada which were devised by a testator in trust for sale, and to transmit the proceeds to England for the absolute use of John Radcliffe. It appeared that Mr. Radcliffe died before all the estates were sold, having by his will devised all his property to the petitioner, and that the two trustees under the original testator's will had died, and that the heir-at-law of the survivor of them was in Scotland.

Nichols in support.



The Vice-Chancellor made the order as asked.

*Halsey v. West.* Feb. 17, 1855.

INFANT WARD OF COURT.—SALE OF ESTATE UNDER POWER IN MORTGAGE.

*Certain estates belonging to an infant ward of Court were considerably incumbered, and an application was made to sell under the power in the mortgage deed, without waiting the time when a sale would take place in the usual course: Held, that the application was premature, as the power of sale did not imply the necessity to sell, and a title could only be made in the case of the sale being for the payment of debts; and a reference was directed at Chambers to make the requisite inquiries.*

THIS was an application for a sale of certain estates which were considerably incumbered under the power contained in one of the mortgage deeds, without waiting the time when a sale would take place in the usual course. It appeared that the property belonged to an infant ward of Court.

*Giffard* in support.

*Piggott* for the trustees of the marriage settlement; *Bazalgette* for the guardian; *H. R. Young* for other parties.

The Vice-Chancellor said, it would be premature to direct a sale, but the cause would be referred to Chambers to make the requisite inquiries, whether it was necessary to sell in order to pay debts, in which case alone (it being an infant's estate) a title could be made out, as a mortgage with a power of sale did not involve the necessity of selling.

Vice-Chancellor Stuart.

*Hatwell v. Rimell.* Feb. 12, 1855.

WILL.—CONSTRUCTION.—EXECUTION OF POWER OF APPOINTMENT AMONG CHILDREN.

*A testator gave his residuary property in trust for his wife for life, and after her death for his six children, and that if any child should die in her lifetime he gave the share of the child so dying to his wife to be disposed of by will among the surviving children or either of them as she might think fit. By the wife's will she gave her residuary estate to four children only, with cross-executory trusts on survivorship, and two of these died in her lifetime: Held, that her will was not an execution of the power in the first will in respect of the shares of such deceased children.*

THE testator, by his will, gave his residuary property to trustees on trust for his wife for life, and after her death in trust for his six children, and if any child should die in her lifetime, he gave the share of the child so dying to his wife to be disposed of by will among the surviving children or either of them, as she might think fit. It appeared that the wife, by

her will, gave all her residuary estate among four of the children, with cross-executory trusts between them in the event of survivorship, and that two of such children had subsequently died during her lifetime. The two children who were excluded now contended that this will was not an execution of the power so as to pass the shares of the two children who had died.

*De Gea* for the plaintiffs; *R. W. E. Forster* and *Shebbeare* for the defendants.

The Vice-Chancellor said, that the will was not a good execution of the power contained in the testator's will.

*Earl of Mansfield v. Ogle.* Feb. 20, 1855.

REVERSION.—ADVANCE ON SECURITY OF.—USURY.—PLEADING.

*The reversioner in fee expectant on the death of his father of an estate, obtained in 1819 an advance of 500*l.* upon a conveyance of the reversion in trust to pay 1,000*l.* to the lender if the father did not live five years, and 1,500*l.* if for a longer period, but no interest was payable on the loan: Quære, whether the transaction was usurious?*

*But where in a suit by a mortgagee for a foreclosure to which such lender was made a defendant and answered setting out his security, and the plaintiff did not amend and object to it as a charge on the land: Held, that he could not object on a reference to the Master to ascertain the charges thereon; and that if no proceedings were taken to set aside the deed, it would stand as a security for the principal and interest thereon from 1819, with the lender's consent.*

IT appeared that the defendant in this foreclosure suit being entitled to the reversion in fee, expectant on the death of his father, in an estate, had obtained an advance of 500*l.* from Mr. Complin, and conveyed his reversion in trust by sale or mortgage to pay Mr. Complin 1,000*l.* if his father should die within five years, and 1,500*l.* if he should survive that time. The father survived the five years, and Mr. Complin claimed to have a charge on the estate for the larger sum, and in his answer he set out the nature of his security. On the hearing a decree was made for a reference to the Master as to the charges and incumbrances, and their priorities, and he had disallowed Mr. Complin's claim on the ground of usury.

*Bacon* and *C. M. Roupell* now appeared in support of exceptions to this report; *Malins* and *Selwyn* for the plaintiff, a mortgagee, contra; *Wigram, Lee, Bagshawe, Schomberg,* and *Wickens* for other parties.

The Vice-Chancellor said, that as the plaintiff had not, when Complin by his answer stated the nature of his security, amended his bill and objected to it as a charge on the estate, the objection of usury could not upon the pleadings be now raised: *Dunn v. Calcraft*, 2 Sim. & St. 56. There must be a decree that

the defendants, the incumbrancers, declining to proceed at law or in equity to set aside the deed of 1819, the exceptions must be allowed, with a declaration that, Complin consenting to accept the principal sum with interest, the deed should stand as a security for the same.

#### Vice-Chancellor Wood.

*Breed v. Caffell.* Feb. 10, 1855.

#### TRUSTEES' ACT, 1850.—APPOINTMENT OF NEW TRUSTEE IN BANKRUPTCY.—COSTS OF ASSIGNEES.

*On the bankruptcy, since bill filed, of the defendant, the sole trustee under a testator's will, which contained no power for the appointment of a new trustee, an order was made on petition by the plaintiffs in the matter of the Bankrupt Law Consolidation Act, 1849, and the Trustees' Act, 1850, appointing such new trustee, and directing the assignees to convey and surrender the estate to him—the costs of the petition to be taxed, and those of the assignees, and if any surrender, to be paid by the plaintiffs, with liberty to apply in the suit in reference thereto.*

In this suit, it appeared that the defendant, who was sole trustee under the will of the testator, had become bankrupt since the bill was filed. The will, containing no power to appoint a new trustee, the plaintiffs presented this petition in the matter of the Bankrupt Law Consolidation Act, 1849 (12 & 13 Vict. c. 106), and the Trustees' Act 1850 (13 & 14 Vict. c. 60), for the appointment of a new trustee, for the assignees to convey and surrender the real estate upon the trusts of the will, and that the costs of the petition might be a charge on the real estate.

*H. F. Bristowe* for the plaintiffs in support, referred to sec. 30 of the 12 & 13 Vict. c. 106, which enacts, that "if any bankrupt shall, as trustee be seised, possessed of, or entitled to, either alone or jointly, any real or personal estate," &c., "it shall be lawful for the Lord Chancellor, on the petition of the person entitled in possession to the receipt of the rents, issues, and profits, dividends, interest, or produce thereof, on due notice to all other persons (if any) interested therein, to order the assignees and all persons whose act or consent thereto is necessary to convey, assign, or transfer the said estate," &c., "to such person as the Lord Chancellor shall think fit upon the same trusts as the said estate," &c., "were subject to before the bankruptcy, or such of them as shall be then subsisting and capable of taking effect, and also to receive and pay over the rents, issues, and profits, dividends, interest, or produce thereof as the Lord Chancellor shall direct;" and to the 13 & 14 Vict. c. 60, s. 32, which enacts, that "whenever it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the Court of Chancery, it shall be

lawful for the said Court of Chancery to make an order appointing a new trustee or new trustees either in substitution for, or in addition to, any existing trustee or trustees;" and s. 51 directs, that "the Lord Chancellor, intrusted as aforesaid, and the Court of Chancery, may order the costs and expenses of, and relating to, the petitions, orders, directions, conveyances, assignments, and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the lands or personal estate, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Lord Chancellor or Court shall think proper."

*Southgate*, for the assignees, consented.

The Vice-Chancellor said, that an order would be made for the appointment of a new trustee as asked, and for the assignees to convey and surrender the estate to him. The costs of the petition would be taxed and the petitioners pay the assignees their costs of petition and of surrender, with liberty to apply in the suit in reference thereto and to their own costs.

*Scott v. Bentley.* Feb. 14, 20, 1855.

#### LUNATIC.—SCOTCH CURATOR BONIS CAN GIVE DISCHARGE FOR PERSONAL PROPERTY HERE.

*Held, that the curator bonis in Scotland of a lunatic can give an effectual discharge to the representative of the obligor of a bond, for the arrears of an annuity to the lunatic, secured thereby and admitted to be due, and that such curator can sue for personal estate belonging to the lunatic in this country.*

THIS suit was instituted by the *curator bonis* in Scotland of a lunatic to obtain the payment from the defendant of certain moneys admitted to be due for the arrears of a rentcharge, payable to the lunatic under a bond and covenant given by the testator of the defendant, and for a declaration for all future payments to be made to the plaintiff.

*Rolt* and *W. D. Evans* for the plaintiff; *Daniel* and *G. Lake Russell* for the defendant.

*Cwr. ad. vult.*

The Vice-Chancellor said, there was very little authority on the point. There appeared to have been a decision of the House of Lords in a converse case (*In re Morrison's Lunacy*, cited in *Sill v. Warwick*, 1 H. Bl. 677, and mentioned in *Johnstone v. Beattie*, 10 Clark & Fin. 97), deciding that an English guardian could institute a suit for the personal property of his ward in Scotland. In a subsequent case (*Thorne v. Watkins*, 2 Ves. S. 37), Lord Hardwicke, observing on the fact of personalty having no locality, referred to *Morrison's* case in the House of Lords, and it would seem that the decision of the Scotch Court of Sessions against the right of the committee of an estate in England to sue for personal estate in Scotland had been reversed. This would be an authority for the

present case, and go to show that a *custodia bonis* ought to have a corresponding right here, and the observations of Lord Cottenham in *Newton v. Manning*, 1 M'N. & G. 362, were also in favour of such a conclusion. With respect to the objection that the plaintiff ought to have proceeded at law, it was met by the fact that the defendant admitted having set apart the sum due to the plaintiff, because he could not give a discharge, and this amounted to a clear declaration of trust, and the suit was therefore properly instituted here.

#### **Court of Queen's Bench.**

*Scott v. Zygomale.* Jan. 13, 1855.

COMMON LAW PROCEDURE ACT, 1854. — PRACTICE TO OBTAIN INSPECTION OF DOCUMENT.

*The defendant admitted the copy of a letter to be in his possession, in the interrogations delivered under the 17 & 18 Vict. c. 125, s. 51: Held, that in order to obtain a copy, the plaintiff must proceed under section 50, and not by rule nisi on him to give such copy.*

THIS was a motion for a rule nisi on the defendant, to give a copy of a letter admitted by him in the interrogations delivered under the 17 & 18 Vict. c. 125, s. 51, to be in his possession.

*Manisty* in support.

The Court said, that an application must be made under the 50th section<sup>1</sup> for an inspection, and the rule would therefore be refused.

#### **Queen's Bench Practice Court.**

(*Coram Coleridge, J.*)

*In re Greenwood.* Feb. 10, 12, 1855.

LUNATIC. — IRREGULARITY OF MEDICAL CERTIFICATES. — HABEAS CORPUS.

*Where the certificates of two medical men as to the lunacy of a party stated the exami-*

<sup>1</sup> Which enacts, that "upon the application of either party to any cause or other civil proceeding in any of the Superior Courts, upon an affidavit by such party of his belief that any document to the production of which he is entitled for the purpose of discovery or otherwise, is in the possession or power of the opposite party, it shall be lawful for the Court or Judge to order that the party against whom such application is made, or if such party is a body corporate, that some officer to be named by such body, shall answer on affidavit, stating what documents he or they has or have in his or their possession or power relating to the matters in dispute, or what he knows as to the custody they or any of them are in, and whether he or they objects or object (and if so on what grounds) to the production of such as are in his or their possession or power; and upon such affidavit being made, the Court or Judge may make such further order thereon as shall be just."

*nation to have been made at B., which the affidavits showed to be a large and populous place, but omitted the name of the street, and number of the house, as required by s. 4 of the 16 & 17 Vict. c. 96, an application was granted on the return to a writ of habeas corpus for the discharge from a lunatic asylum of such person.*

THIS was an application, upon the return to a writ of *habeas corpus*, to discharge Mr. Greenwood, who was detained in a lunatic asylum on the certificates of two medical men.

*Wilkins, S. L.*, took an objection on the ground that the certificates did not state the number of the house, and name of the street, where the examination had taken place, pursuant to the form required to be used by the 16 & 17 Vict. c. 96, sect. 4.<sup>1</sup>

*Monk, contra.*

*Curr. ad. vult.*

The Court said, the certificates stated that examination had been made at Blackburn, which the affidavits showed to be a large and populous place, but omitted the name of the street according to the form in the schedule to the Act. It was not agreeable to decide on a formal objection when the defect had no influence on the merits, but decisions were precedents, and the words of the Statute were express, and if one thing were omitted, so might all the others, which were with a view to the protection of a lunatic. The certificate was therefore defective, and Mr. Greenwood would be discharged.

#### **Court of Eschequer.**

*Hinton v. Mead.* Jan. 11, 1855.

AWARD. — SETTING ASIDE FOR IRREGULARITY. — PRACTICE.

*A rule was made absolute to set aside an award upon a reference by a Judge's order, where it had been made without the knowledge of the third arbitrator; and held that it was not necessary to take up the award in order to set it aside.*

THIS was a rule nisi to set aside an award upon a reference by a Judge's order, on the ground that it had been made without the knowledge of the third arbitrator.

*Hawkins* showed cause on the ground that the award had not been taken up, and was not therefore before the Court.

*Prentice* in support.

The Court said, that the award was clearly bad, and it was unnecessary to incur the expense of taking it up. The rule would therefore be made absolute.

<sup>1</sup> Which enacts, that "no person (not being a pauper) shall be received as a lunatic into any licensed house or hospital," "without the medical certificates according to the form in Schedule A., No. 2, annexed to this Act, of two persons, each of whom shall be a physician, surgeon, or apothecary," &c.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

— SHALL attend you at your service. — *Shakespeare.*

SATURDAY, MARCH 3, 1855.

### THE RIVAL BILLS OF EXCHANGE BILLS.

#### 1st. "SUMMARY EXECUTION ON BILLS OF EXCHANGE."

THIS Bill, which has been introduced by *Lord Brougham*, is taken from the Scotch "Summary Diligence" procedure—renders it necessary, in order to a proceeding under its provisions, 1st. To employ a notary to present and protest a dishonoured Bill. 2nd. To register the protest with an officer to be newly appointed; and 3rd. To obtain an order for payment, after which judgment is to be obtained. These three steps are entirely new, and are in effect substituted for the present far simpler writ of summons. They will create a serious addition to the proceedings now required before obtaining final judgment in an action on a bill or note. These new proceedings would therefore be more expensive than the old.

The services of the notary and the new registrar are quite useless, and the expense of them is a burden unnecessarily thrown on the plaintiff before obtaining execution. At present, on a bill being dishonoured, the holder may issue a writ and obtain judgment and execution without a protest and without registration.

The Bill assumes that a protest by a notary is evidence of the requisites which entitle the holder to recover in an action against the drawer or indorsers, and on such assumption confers special rights on the holder of a protested Bill; but in fact the protest affords no such evidence, and is quite useless. 1st. The notary knows nothing as to the handwriting of any of the parties. 2nd. He always presents the bill, when

payable, at a London banker's at the banking house after banking hours—a presentment at a time when it could not by any possibility be paid, and which in no way binds the drawer or indorsers. 3rd. The notary can have no knowledge whether notice of the dishonour by the acceptor be given in due time to the other parties on the Bill.

The Act cannot be carried into effect in towns where there are no resident notaries without much increased expense by correspondence and the employment of agents. A preference would thus be given to towns where notaries reside, which are only about 130 in England and Wales.

The expense will be increased both in undefended and defended actions according to the proposed plan, for the protest and registration are superadded to the costs at the commencement of the proceedings.

The following is an analysis of the Bill:

1. Commencement of Act.
2. Bills and notes for the purposes of this Act are to be protested.
3. Holders of dishonoured bills or notes, after protesting them may proceed under this Act.
4. A registrar of protested bills to be appointed by her Majesty.
5. Holders of dishonoured bills or notes may, after protest, register the same and the protest, and obtain an order of the Court of Common Pleas against the parties to the bill or note for payments of principal, interest, and costs, in six days, and if default made for six days after service, the order may be registered as a judgment on an affidavit of service, and execution may issue.
6. Seal of registry office to be made; copies of proceedings stamped therewith to be received in evidence.

7. Order to be endorsed with name and abode of attorney, or a memorandum that order has been sued by plaintiff in person.

8. Attorney on demand to declare whether order issued by his authority, and to declare name and abode of his client. If order issued without authority of attorney, proceedings to be stayed.

9. Orders may be served in any county.

10. Orders against corporations may be served on their clerk.

11. Mode of service in general.

12. Order may be obtained against a party residing out of jurisdiction of Superior Courts.

13. Concurrent orders may issue.

14. Before execution levied, the party served with order may apply to Court or Judge on affidavit to stay execution.

15. Where a good legal or equitable defence is shown, the Court may direct an issue in fact or a special case for the opinion of the Court.

16. The party seeking to stay execution must furnish security for debt and costs, unless otherwise ordered.

17. Costs of issue to be in discretion of the Court.

18. On the finding of the jury or judgment of the Court, the order for payment is to be discharged or enforced according to the result.

19. Attorneys and solicitors not exempt from provisions of this Act.

20. Saving of all other remedies, and not to apply to bill or notes not exceeding fifteen pounds.

21. General rules for execution of the Act may be made by Judges of Court of Common Pleas.

22. Registrar to be paid by a salary to be fixed by Treasury.

23. New or altered writs, &c. to have same force as all other orders and rules.

24. Protest to prove itself for registration, but the Court or Judge may require further proof of presentation by notary.

25. Power to Judge, upon affidavit of fraud, to impound bill at instance of defendant, and to order security for costs.

25. Affidavits made out of the kingdom may be sworn before a consul.

27. Interpretation of terms in Act.

28. Short title of Act.

## 2. BILLS OF EXCHANGE AND PROMISSORY NOTES.

Let us look now at the other Bill brought in by Mr. *Keating* and Mr. *Mullings*.

The object of this Bill is to prevent frivolous and fictitious defences which delay the plaintiff and increase his expense, and the Bill arrives at the same end as is proposed by the other Bill, and by a much shorter proceeding.

It authorises an alteration in the form of the Common Law writ in actions on bills or notes without increasing the expense, and prevents frivolous and fictitious de-

fences by requiring the defendant to obtain the leave of a Judge before appearing and defending the action.

Under this Bill, as under the other, the Judge will decide whether there is sufficient ground to entitle the defendant to try the question.

The mode of proceeding is easy and simple, and in accordance with the improved practice under the Common Law Procedure Act. It makes the smallest amount of change, adds nothing whatever to the costs of the plaintiff, requires the appointment of no new officer, benefits all parts of the country alike, and merely prevents a defence to the action on a bill or note when the defendant is not able to make out a *prima facie* case.

The following is an analysis of the Bill :

1. Actions on bills and notes may be commenced under this Act by writ of summons, with indorsement of claim and notice; and if the defendant do not obtain leave of the Court or a Judge to appear, the plaintiff may sign judgment.

2. The defendant, showing a defence upon the merits, may have leave to appear.

3. The Judge may before or after judgment give leave to appear, although a defence be not shown, if reasonable ground be laid.

4. The writ may be served on a defendant out of the jurisdiction of the Court, the time for appearance being regulated accordingly.

5. The foregoing enactment as to appearances to apply to cases where the defendant resides out of the jurisdiction.

6. The Common Law Procedure Act and Rules incorporated with this Act.

7. The Act not to extend to Ireland or Scotland.

We believe the scope and objects of these several Bills are not clearly understood. By communications we have received from the country, we apprehend that the merits of Lord Brougham's Bill are *overrated*, and Mr. Keating's *underrated* (see p. 331). We trust that a careful consideration of each measure will lead to a right conclusion. The 2nd reading is now fixed for the 28th inst.

## EXECUTOR AND TRUSTEE SOCIETY BILL.

THIS Bill, which was brought into Parliament last Session for enabling the Executor and Trustee Company to accept trusts and executorships, and after a full hearing attended by counsel before a Select Committee of the House of Lords was negatived, has been brought into the House of Commons in the form of a *Private Bill*, pre-

posing to alter the Law relating to trustees and executors in various respects :—

1st. By enabling the company to appoint official executors ;

2nd. To alter the mode of admission to copyhold estates ;

3rd. To enable Ecclesiastical Courts to grant probates and administrations to the company ;

4th. To appoint the company as receivers or committees ;

5th. On the death or refusal of trustees to act, to appoint the company in their stead ;

6th. To enable trustees and executors to transfer the trust property to the company ;

7th. To indemnify the trustees on such transfer ;

8th. To enable the company to receive a commission for executing the trusts, although no such allowance be provided in the settlement or will, &c.

Independently of objections to the principle of the Bill, it is evident that such extensive alterations of the general law, and such interference with the jurisdiction of the Courts of Equity, ought not to be proposed to Parliament in the form of a *Private Bill* for the benefit of a joint-stock company, but that the measure, if proper to be entertained, should be introduced as a *Public Bill*, and leave obtained in the usual form.

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### MEETING AT BIRMINGHAM ON THE BILLS OF EXCHANGE BILLS.

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A MEETING of Bankers, Merchants, Manufacturers, and others, was held on Friday last, the 23rd February, on the subject of the two Bills introduced by Lord Brougham and Mr. Keating. The interests of the town were very fully represented. It will be observed that several of the speakers have not carefully read the several Bills, which we have set forth on a previous page.

Mr. Charles Shaw, banker, merchant, factor, and manufacturer, presided. Mr. Henry Edmunds represented the Midland Banking Company ; Mr. T. A. Attwood (Spooners, Attwood, & Co.), Mr. James Lloyd (Taylor & Lloyd), and by proxy or otherwise all the other banks in the town were represented ; Mr. Alderman Van Wart headed the merchants ; Mr. Alderman Baldwin, and Messrs. Cornelius Goode and Hinks, the manufacturers ; Mr. W. J. Beale and Mr. J. Slaney, solicitors, concurring with the originators of

the meeting in the determination to oppose both Bills, attended in that spirit. Besides these, Mr. Alderman Hodgson, Mr. Arthur Ryland, Mr. Councillor Cutler, and other gentlemen, were present, and took part in the discussion.

Mr. W. J. Beale explained the nature and provisions of the two Bills. First, that of Lord Brougham's in which power was given to any holder of a dishonoured bill, after six days' registration under the registrar appointed by the Court of Common Pleas, to take summary execution unless upon affidavit a Judge could be satisfied that there were good grounds for a defence. According to the provisions of the Bill, too, a record was to be provided, open to all parties, of all bills so proclaimed. The other Bill promoted by Messrs. Keating and Mullings had the same object in view, but the process was different, the ordinary forms of the law were not to be set aside.

Mr. Armytage, a manufacturer, was of opinion that no objection could be entertained to the proclamation of a dishonoured bill ; and he said that in his opinion the bill of Messrs. Keating and Mullings would only have the effect of *increasing expenses* : for the sake of *economy*, he was decidedly in favour of the *Scotch Law*.

The *Chairman* replied that his experience had shown to him that the Scotch mode of procedure was by far the most expensive. A creditor in this country, before any proceedings could be taken in the Scotch Courts against a debtor there, must employ a deputy to act for him, and give him security for all the costs incurred—a very expensive process, especially in the event of a failure.

Mr. Edmunds, of the Midland Bank, remarked that the question of expense was not the real matter to be considered in discussing these two Bills. The question really was the opportunity which either of these bills would give to one creditor (possibly a pretended one) to obtain an advantage over another, or a *bond fide* creditor. If either of these Bills passed into a law as they at present stood, a bill might be drawn at three days' date ; in six days from that time the bill would be due, and in fourteen days' time one creditor would take possession of everything. In his opinion, it was unjust and wrong for the law to be the means of enabling one creditor to obtain a preference over another ; if a man was to be broken up, let his assets go to his creditors generally. The commercial public did not want either of these Bills ; they would protect Jews and discounters only, and were highly objectionable. To interfere in the manner proposed would be to injure commerce, because it would restrict commerce ; especially on looking at the immense amount of bills in circulation and the comparatively few that were dishonoured, it had been shown that no interference or restriction was necessary.

Mr. Slaney reminded the meeting that the force of a judgment under Lord Brougham's

Bill would have as much force as a judgment obtained after a trial. In fact, it came to this, that a judgment by confession would be incontrovertible; indeed, if the bill passed, it would operate to an extent and with a force and effect not to be obtained by any procedure of our law in existence—that he was aware of.

Mr. Salt said, the Bill might fairly have been called a Bill for the Speedy Destruction of Creditors, and for facilitating Frauds.

The Chairman said, that, as a banker, he was opposed to both Bills, because they were not required. After twenty-five years' experience, he could safely say that he had never gone into Court upon Bills more than six times. He agreed that the present law affecting banks was a shameful law, and that the difficulties which had been thrown in the way of the establishment of new joint-stock banks was a disgrace to the Legislature.

Mr. Alderman Hodgson, Mr. Alderman Baldwin, Mr. Arthur Ryland, Mr. Alderman Munton, and other gentlemen, afterwards addressed the meeting, all concurring in the objections which had been raised against both bills, both on the grounds of the new machinery which it was proposed to introduce, and the facilities that would be afforded to dishonest debtors to give a preference to relatives or other parties not *bona fide* creditors.

Mr. Martinson expressed his surprise that these bills should have been introduced at all; none of the great towns in the country had asked for any change; the bills appeared to have originated with the lawyers in Parliament, and although he had no desire to impute motives, it appeared to him as if the purpose was to promote rascality and restrict the circulation of good bills. Looking at the immense amount of bills circulating in the country, very few indeed were dishonoured; there was nothing to justify any such harsh measure as was proposed, and the commercial community might safely be left to take care of itself.

After some further discussion, the following petition to Parliament was adopted:—

"That your petitioners view with great dissatisfaction and alarm the provisions of the Bill, by which it is proposed to confer more summary remedies on the holders of bills of exchange and promissory notes, and submit that evils would be substituted by such an enactment, of a far greater magnitude than those which it is intended to redress.

"That in all recent reforms and alterations in the commercial law of this country it has been the uniform policy of the Legislature to endeavour to prevent and punish collusions and fraudulent preferences between debtors and creditors, and, in case of the inability of a trader to meet his engagements, to bring about an early and to secure an equal distribution of his property amongst all his creditors, and especially to render less available secret securities in the hands of an individual creditor.

"That by the provisions of this Bill an undue bill of exchange or promissory note will have all the force and effect of a secret security available in eight days against the property and person of a trader, which, besides giving an undue advantage to the creditor whose bill or note happens to be first dishonoured, will make a trader by a collusive arrangement with a friendly or family creditor, to procure his property to be swept away, and a fraudulent preference to be obtained over all his other creditors.

"That the provisions of the Bill by which endorers as well as acceptors and drawers of bills and notes are rendered indiscriminately liable to have a judgment recorded against them and their property and person seized in execution in eight days after dishonour of a bill or note which they were not primarily liable to pay, are calculated to create great distrust and alarm amongst the commercial classes of this country, and seriously to interfere and diminish the use of bills of exchange and promissory notes as a medium of circulation, to create great confusion and inconvenience in the negotiation of foreign bills of exchange, which are remitted to this country in payment of the ordinary course of business.

"That such an enactment will be directly opposite to the policy of the law, unless further provisions are introduced by which proceedings against the trader on a dishonoured bill or note shall be made to result in an equal distribution of his property against all the creditors, and not on the preference of one creditor over another; and your petitioners submit that if the Bill is passed into law in its present form, greater facilities for the perpetration of fraud will be created than at present exist, and greater evils arise than any which are now felt by reason of frivolous or vexatious defences to actions on bills of exchange or promissory notes under the existing law.

"That whilst the power of defending an action to gain time may be sometimes frivolously and vexatiously used, it is more frequently adopted by traders acting under advice for the benefit of the general body of their creditors, and as a means of obtaining time and opportunity to look more narrowly into the state of their affairs, and to enable them to call their creditors together, with a view to some arrangement by which the creditor suing may not obtain a preference over all others; and your petitioners contend that the provisions of the existing law in this respect, which the proposed bill is intended to change, have not been required to be altered, nor have the new remedies, which it has been sought to substitute, been called for by any of the influential classes of commercial men in this country."

## PUBLIC PROSECUTORS AND AMENDMENT OF CRIMINAL LAW.

THE preamble of this Bill states that the appointment of public prosecutors for the purpose of conducting the prosecution of criminal offenders would conduce to the efficient administration of justice: it is therefore proposed to enact as follows:—

### *Division of Circuits.*

1. It shall be lawful for her Majesty, with the advice of her Privy Council, to divide the whole of England and Wales and the several counties thereof into such and so many districts as to her Majesty, with the advice aforesaid, may seem necessary for the purpose of this Act, and to alter such districts, if it shall so seem fit to her Majesty from time to time.

### *Appointment and Duties of Public Prosecutors.*

2. The Lord Chancellor shall appoint for each of such districts one or more fit persons, each of them being a barrister-at-law of not less than ten years' standing, to conduct, as herein-after mentioned, therein all criminal prosecutions throughout England and Wales.

3. Every such barrister so appointed shall be styled "the public prosecutor" for his respective district, and shall be paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland a fixed annual sum, to be fixed by the Commissioners of her Majesty's Treasury, not in any case exceeding 1,500*l.*, including travelling expenses; and such public prosecutor shall not be removable, except by reason of misconduct or inability to discharge his functions; and if it shall appear, after examination and inquiry, to the Lord Chancellor and the Lord Chief Justice of the Queen's Bench, that any such public prosecutor has been guilty of such misconduct, or is unfit to discharge the duties of his office, the Lord Chancellor and the Lord Chief Justice of the Queen's Bench shall and may remove such public prosecutor from his office; and such public prosecutor shall not during the time he holds such office hold any other place or office of profit whatsoever under the Crown or otherwise.

4. Such public prosecutor, on the receipt of the statement of the evidence and copies of the depositions taken before the magistrates and justices of the peace acting in the counties, cities, boroughs, and places in his district, upon the examination of any person charged with felony or misdemeanour, and transmitted for that purpose to such public prosecutor by the district agents hereinafter-mentioned, shall peruse and consider the same, and within as short time as he conveniently can after the receipt of the above-mentioned communication shall signify his opinion in writing whether such evidence is sufficient or not to justify the commitment for trial of any person or persons named or mentioned therein; and whether the

prosecution of such accused persons will conduce to the ends of public justice, or whether such persons should be discharged, or if on bail released from the necessity of appearing again in answer to the charge, or remanded for further examination, and shall from time to time, upon any case or question submitted to him for that purpose by the district agents hereinafter-mentioned, advise whether a prosecution shall or shall not be instituted for any alleged offence, and advise upon the evidence to be adduced on the trial or examination of any accused person, and on any other fact, circumstance, or emergency arising before the trial of any indictable offences whatsoever.

5. The several public prosecutors for any district, the whole or any part of which is within the jurisdiction of the Central Criminal Court, shall attend the trial, and assist in conducting the prosecution on the part of the Crown for offences tried at the Central Criminal Court, and in like manner the several public prosecutors shall attend at and conduct the prosecution of all offences to be tried at the assize towns for all places within their respective districts.

### *Deputy Public Prosecutors.*

6. Whenever at any assize town, by reason of the holding of two or more Courts for the trial of prisoners at the same time, or from the serious nature of the offences to be tried, or by reason of the number of witnesses to be examined, or of the temporary illness of the district public prosecutor, or for any other cause, it is desirable to provide additional assistance, it shall be lawful for the clerk of assize, on the application of the district agent, and obtaining the certificate of the Judge presiding in the Crown Court that such additional assistance appears to him to be desirable, to nominate as many deputy public prosecutors as the Judge shall certify to be required.

7. Such deputy public prosecutors shall be a barrister of not less than three years' standing, and shall be paid a sum, to be fixed by the clerk of assize or his deputy, not exceeding ten guineas for any whole day he may be so employed, and less in proportion for any part of a day, and such deputy public prosecutor shall not be appointed for any longer period than one whole day on one particular case, provided that nothing shall prevent his re-appointment from day to day so long as his services may be necessary.

### *Assistant Prosecutors at Quarter Sessions.*

8. In order to provide for the conduct of prosecutions in Courts of Quarter Sessions in counties and boroughs, be it enacted, that her Majesty, with the advice aforesaid, may appoint barristers of not less than five years' standing, five for Middlesex and Westminster, and one for every other county or sessional division of a county in England; and one for two counties in Wales, and one for every such borough or other district as her Majesty, with the advice aforesaid, shall order, who shall be called "the assistant public prosecutors;" and



who shall conduct the prosecution of all persons tried for felonies and misdemeanors at the said Courts and all adjournments thereof, and at all Superior Courts having jurisdiction over such offences; and not otherwise provided for; and such assistant public prosecutor shall be paid out of the said Consolidated Fund a fixed annual sum, to be fixed by the Commissioners of her Majesty's Treasury, in no case whatever exceeding 300*l.*, including travelling expenses; and such assistant public prosecutor shall not be removable, except by reason of misbehaviour or neglect, or inability to perform the duties of his office, in any of which cases, if the misconduct or unfitness be proved to the satisfaction of the Lord Chancellor, he shall and may remove him; and no such assistant public prosecutor shall be a revising barrister, nor one of her Majesty's counsel, nor shall he hold any other place or office whatsoever under the Crown within the county, borough, or district for which he is so appointed.

9. Where the Judge presiding in the Criminal Court at the Summer Assizes for any county shall certify that he is informed and believes that the conduct of prosecutions at the Quarter Sessions for such county, or for any district or borough within the same, requires additional assistance, the clerk of assize shall furnish the district agent hereinafter mentioned, with the names of four barristers attending at such Sessions, who shall be chosen in rotation as deputy assistant public prosecutors at the sessions of the peace for the year ensuing, one at each such quarter sessions and any adjournment thereof, and who shall be paid a sum not exceeding five guineas for any day so employed.

*District Agents to act as Attorneys.<sup>1</sup>*

10. It shall be lawful for the majority of justices at each petty sessions to appoint an attorney-at-law of not less than three years' standing to act either separately, or in cases of importance in concert with the district agent hereinafter mentioned, for the purpose of discovering, collecting, and preparing the evidence, and to perform the duties of an attorney for the prosecution in all cases arising within the jurisdiction of such petty sessions; and such person shall be removable at the pleasure of the majority of the said justices, and shall be paid by a fixed salary not exceeding *pounds* per annum, to be fixed by her Majesty's Principal Secretary of State for the Home Department, and shall not under any pretence receive any fee whatever for any prosecution in which he shall be so concerned as aforesaid, and if he does receive any fee in such case shall be guilty of a misdemeanor.

<sup>1</sup> These clauses appointing attorneys to act as district agents on prosecutions will, of course receive the attention of our readers. The effect will be of serious importance to a large number of practitioners.—*Ed. L. O*

11. It shall be lawful for the Lord Chief Justice of England to appoint for any county, division, riding, or any borough, or such other district as may be thought fit, to be determined by her Majesty, with the advice aforesaid, one or more persons, each of whom shall be an attorney-at-law of not less than seven years' standing, or barrister<sup>2</sup> of not less than five, to act as district agent for the purpose of superintending the conduct and management of prosecutions by the last-mentioned attorneys at petty sessions, and, where it may be necessary, in serious and important cases, of discovering, collecting, and preparing the evidence, and performing the duties of an attorney for the prosecution, in all cases arising within his district, and who shall be removable from his office at the pleasure of the Crown, shall receive no fees, and who shall be paid out of the said Consolidated Fund a yearly salary not exceeding *pounds*.

12. The duties of such district agent shall be to apply for warrants; to attend at and conduct the examination of witnesses at police courts and before justices of the peace, when occasion shall require; to investigate the evidence relating to any crime committed within his district; to transmit copies of all depositions of witnesses and statements of prisoners, and all other material information, to the public prosecutor for the district; to communicate with and receive instructions from the public prosecutor; to prepare briefs, and attend at the trial, and perform all the other duties of an attorney for the prosecution.

13. For the more efficient discharge of the duties of district agent, it shall be lawful for one of her Majesty's Principal Secretaries of State from time to time to issue rules and directions for the guidance of the district agents, which rules shall be binding upon them, and all justices of the peace, stipendiary magistrates, clerks to justices, and peace officers, and all other persons mentioned therein.

14. It shall be the duty of all policemen and all constables, so soon as they shall have reasonable cause to believe that any felony or misdemeanor (such misdemeanor not being one of those hereinafter excepted) has been committed, to give immediate information thereof to the district agent, or the attorney appointed by the justices at petty sessions.

15. The justices of the peace or magistrate before whom any accused person is brought may, if he think fit, give notice to the district agent to attend the examination; and it shall be the duty of such agent on such occasions to attend and examine the witnesses, and argue any questions of law or fact that may arise during the investigation.

*Justices may remand the accused.*

16. Justices of the peace and police magistrates, before the discharge or final committal for trial of any person, may, on their own dis-

<sup>2</sup> How can a barrister act as an attorney in these prosecutions?

cretion, in any case, or at the request of the district agent, adjourn the examination of such accused person for such a period as will enable the opinion of the public prosecutor to be taken, in the same manner as is now practised with reference to offences relating to the current coin of the realm; provided that nothing herein contained shall deprive any such justice or police magistrate of any discretionary power he now has of discharging or committing for trial any accused person, notwithstanding the opinion or certificate of the public prosecutor to the contrary; but, in the case of any such committal for trial contrary to the advice of the public prosecutor, the district agent shall not be required to perform any duty in respect thereof, and no costs shall be allowed on the trial in respect thereof, unless the judge or chairman of quarter sessions or recorder shall certify that in his opinion such prosecution was properly instituted.

*Power of Grand Juries continued, and Prosecutions as heretofore.*

17. Provided, That nothing hereinbefore contained shall extend to prevent any person, at his or their own costs and charges, from preferring a bill of indictment before the grand jury, in any cases in which by law he or they may now do so; provided also, that this Act shall not extend to prosecutions by order of her Majesty's Attorney-General, nor to any prosecutions or indictments for common assaults, for libels, for nuisances, or for stopping up or non-repair of roads, or for defamation, or to indictments removed by certiorari.

*Attendance of Witnesses for the Accused.*

18. That it shall be lawful for any accused person, after he shall be committed or held to bail for trial, to apply to the public prosecutor, either directly or through the district agents, stating that he was desirous of compelling certain witnesses, whose names and addresses shall be specified, other than witnesses merely to the character of such prisoner, to appear and give evidence at the trial on his behalf; and thereupon the public prosecutor shall certify that such application has been made to him, and on the production of such certificate to the proper officer in that behalf subpoenas shall be issued to the accused party, free of expense; and if at the trial the Court or Judge shall certify that any person so subpoenaed as aforesaid was in the opinion of the Court or Judge a material witness, the costs of such witness, not being a witness to the character of the prisoner only, shall be allowed, in the same manner as of witnesses attending on behalf of the prosecution.

**NEW ORDER OF THE COURT OF CHANCERY.**

**EASTER VACATION.**

*Monday Feb. 26, 1855.*

WHEREAS by the 1st Article of the 8th of

the General Orders of the High Court of Chancery of the 8th May, 1845, it is provided that the Easter Vacation is to commence and terminate on such days as the Lord Chancellor shall every year specially direct. Now I do hereby order that the Easter Vacation for the present year shall commence on *Monday the 2nd day of April* next, and terminate on *Wednesday the 11th day of April* next. And that this order be entered by the Registrar, and set up in the several offices of this Court.

(Signed) CRANWORTH, C.

**LAW OF ATTORNEYS AND SOLICITORS.**

**TAXATION OF MORTGAGEES' SOLICITORS' COSTS WHERE PRESSURE.**

NOTICE was given on June 23, by the mortgagees, to pay off a mortgage, and the mortgagor having arranged for a transfer of the security, the 9th of July was fixed for the completion. The mortgagees' solicitor delivered his bill on the same day, and objections being made to some of the items, he refused to complete unless his bill were paid, and it was accordingly paid. *In re Wilkinson*, 2 Coll. 92, and *In re Finch*, 16 Beav. 585, were cited.

On a petition for a taxation, the *Master of the Rolls* said, that under the circumstances, a taxation could not be resisted. *In re Phillpotts*, 18 Beav. 84.

**TAXATION OF MORTGAGEES' SOLICITORS' COSTS ON UNDERTAKING TO REFUND.**

THE solicitors for mortgagees, on Nov. 7, 1853, sent in their bill of costs relating to the transfer, amounting to 45*l.*; but although the bill was objected to, its full amount was paid on November 16, upon the business being completed and the following undertaking being given:—"We hereby undertake to refund so much of the 45*l.* this day paid to us by Mr. Eagle, on account of the mortgagees' law charges, as may be found to be in excess of what they are entitled to receive from Mr. Eagle."

On the petition of Mr. Eagle, presented in January, 1854, for a taxation, specifying overcharges, the *Master of the Rolls* said:—"After having read the evidence and considered the cases cited yesterday,<sup>1</sup> and the case of *In re Whitcombe*, 8 Beav. 140, I am of opinion, that I must act upon the undertaking of the 16th Nov. 1853. I think it is an undertaking to return so much of the costs

<sup>1</sup> *In re Rhodes*, 8 Beav. 324; *In re Thompson*, 8 Beav. 237; *In re Eyre*, 10 Beav. 569.

as had been paid in excess. The words are: 'We undertake to refund so much of the 45*l.*, &c., as may be found to be in excess of what *they* are entitled to receive from Mr. Eagle,'—*they*, meaning clearly the mortgagees. As the parties have not been able to agree on the selection of a proper person, I am of opinion, that the Taxing Master must ascertain what has been paid in excess.

I propose to refer it to the Taxing Master to tax the bill, and to ascertain what is due from the petitioner to the mortgagees, in the words of the undertaking.

I am of opinion that I must give effect to this undertaking, which is clear and unambiguous; and in saying that, I shall not in any degree affect the cases referred to yesterday. The only question here is, how to ascertain that which had been paid in excess. It is clear that this must be done, either by a person selected by the parties themselves, or by the officer of the Court." *In re Fisher*. 18 Beav. 183.

#### LAW OF COSTS.

ON PETITION BY PARTIES IN REMAINDER FOR TRANSFER OF PURCHASE-MONEY OF LAND TAKEN FOR RAILWAY.

LAND, devised by a will dated in 1795 to the testator's son for life with remainder over, was taken by a railway company and the purchase-money paid into Court and invested; and the dividends ordered to be paid to the tenant for life. On the death of the tenant for

life on February 1, 1853, the Vice-Chancellor Wood held, that the company was not liable to the costs of his executors on the petition of the parties entitled in remainder for a transfer of the fund, but that they must be paid by them, and that the company was only liable to pay the costs of the petitioners. *In re Longworth's Estate*, 1 Kay & Johnson, 1.

#### OF OFFICIAL MANAGER ON MOVING TO DISCHARGE WINDING-UP ORDER.

An application was made by motion, with notice, to discharge a winding-up order, 15 months after notice of such order, and when considerable costs had been incurred in the winding up: *Held*, that the Court could not discharge the order unless the applicant would consent to pay the costs which had been incurred by the official manager, notwithstanding he applied directly after he was placed on the list of contributories, and the application was supported by evidence of facts which, if disclosed on the hearing of the petition, would have prevented the order. The motion was therefore refused with costs, where he declined to pay such costs. *In re Metropolitan Carriage Company, ex parte Clarke*, 1 Kay & Johnson, 22.

#### OF HEIR ON ISSUE DEMISED VIT VEL NON.

Where an issue demised *vit vel non* is granted to a devisee, the costs of the heir are reserved until further directions. *Boyes v. Colclough*; *Boyes v. Rossborough*, 1 Kay & Johnson, 125.

### PARLIAMENTARY RETURN OF THE ACCOUNTANT-GENERAL OF THE COURT OF CHANCERY.

|  | £          | s. | d. |
|--|------------|----|----|
| The amount of Suitsors' Cash in Court on 1st Oct., 1853, was   | 3,230,226  | 28 | 5  |
| Of which has been invested in Stock and placed to Account of Monies placed out for the benefit and better security of the Suitsors of the High Court of Chancery   | 2,252,464  | 10 | 7  |
| Leaving a balance in the Bank of England of  | 987,762    | 17 | 10 |
| Amount of Stock purchased; account of Monies placed out for the benefit and better security of the Suitsors of the High Court of Chancery, to 1st October, 1853:—  |            |    |    |
|  | £          | s. | d. |
| Bank Three Pounds per Cent. Annuities  | 1,256,285  | 8  | 9  |
| Reduced Annuities  | 1,238,525  | 14 | 11 |
| Three Pounds Five Shillings per Cent. Annuities  | 96,117     | 14 | 10 |
| Amount of Cash invested in Stock placed to the Account of Securities purchased with Surplus Interest arising from Securities carried to Account of Monies placed out for the benefit and better security of Suitsors of the High Court of Chancery, to the 1st October, 1853:— |            |    |    |
|  | £          | s. | d. |
| In Bank Three Pounds per Cent. Annuities   | 492,345    | 19 | 7  |
| In Reduced Annuities   | 459,707    | 7  | 9  |
|  | £1,032,063 | 7  | 4  |

Amount of Stock standing to the said Account of Securities purchased with Surplus Interest, &c. to 1st October, 1853:—

|  | £       | s. | d. |
|--|---------|----|----|
| Bank Three Pound per Cent. Annuities . . . . .           | 570,700 | 16 | 1  |
| Reduced Annuities . . . . .                              | 720,904 | 3  | 5  |
| Three Pound Five Shillings per Cent. Annuities . . . . . | 24      | 6  | 0  |

Amount of Cash laid out in the Purchase of Stock placed to Account of Moneys placed out to provide for the Officers of the High Court of Chancery, viz:—

|   | £       | s. | d. |
|---|---------|----|----|
| Cash arisen from Surplus Fees . . . . . | 141,848 | 7  | 3  |
| Cash arisen from Interest . . . . .     | 45,837  | 19 | 6  |

Stock on the said Account on 25th November, 1853:—

|  |            |    |    |
|--|------------|----|----|
| Bank Three Pounds per Cent Annuities . . . . .   | 201,028    | 2  | 3  |
| The Total Amount of Stock standing on the 1st of May, 1854, to the credit of the several Causes, Matters, and Accounts not dealt with for 15 years, is . . . . . | 256,176    | 2  | 8  |
| The Amount of Annual Dividends accruing thereon, is . . . . .  | 7,865      | 15 | 10 |
| The Number of such Causes, Matters, and Accounts, is 566   |            |    |    |
| Balance of Cash on the Suitsors' Fund on the 1st October, 1852 . . . . .   | 13,200     | 3  | 3  |
| Balance of Cash on the Suitsors' Fund on the 1st October, 1853 . . . . .   | 17,745     | 8  | 4  |
| Income of Suitsors' Fund for the year ending 1st October, 1853 . . . . .   | 113,312    | 17 | 10 |
| Amount of Stock and Securities in Court on the 1st day of October, 1853, exclusive of Stock purchased with Suitsors' Cash . . . . .                              | 44,340,348 | 0  | 8  |

|  | £         | s. | d. |
|--|-----------|----|----|
| Amount of Payments into Court for the year ending 1st October, 1853 . . . . .            | 7,395,161 | 19 | 8  |
| Amount of payments out of Court for the year ending 1st October, 1853 . . . . .          | 6,719,911 | 0  | 7  |
| Amount of Stock transferred into Court for the year ending 1st October, 1853 . . . . .   | 4,619,316 | 16 | 2  |
| Amount of Stock transferred out of Court for the year ending 1st October, 1853 . . . . . | 4,412,236 | 13 | 1  |

|  |        |  |       |
|--|--------|--|-------|
| Total number of Accounts, 1st October, 1853 . . . . .  | 18,046 |  |       |
| Number of Powers of Attorney issued from the Accountant-General's Office for the year ending 1st October, 1853, impressed with 20s. Stamps . . . . . |        |  | 652   |
| Ditto, 30s. Stamps . . . . .   |        |  | 1,888 |
| Total . . . . .  |        |  | 2,540 |

## CURSOR-BARON OF THE EXCHEQUER.

### ORIGIN OF THE TITLE AND OFFICE.

[Concluded from page 121, ante.]

"While, therefore, it is apparent that the office of Cursor-Baron was not *ex nomine* an ancient office, the probability afforded by the circumstances above detailed that it had its origin in the reign of James I. is greatly strengthened by considering the state of the Court at that time. John Sotherton (the elder) on his retirement in 1604 was the last of the regular Barons according to the *ancien régime* and the only one who was practically acquainted with the mode of accounting and other formal business of the Exchequer. George Snigg succeeded him; but, being bred a lawyer, like the Barons he found on the Bench, could not, any more than they, have the requisite knowledge of the technical matters of account, indispensable for the due investigation of the sheriff's returns, and other minute matters which up to that time had been customarily performed by one of the regular

Barons. George Snigg made an attempt to master this duty; for we find his name attached to the current accounts of the year of his appointment.<sup>1</sup> This audit no doubt was sufficient to prove that the duty could not be satisfactorily performed by men whose habits and previous education led them in a very different direction. The exercise also of this laborious but necessary employment must have been so onerous an interference with their judicial functions, that it is most probable the legal Barons represented their own incompetency, and suggested the appointment of some person to aid them, in addition to their number, who was conversant with the duties and competent to perform them.

"Accordingly, in the following year, Nowell Sotherton, who no doubt was bred up in the Exchequer, and was the relative probably of John Sotherton, the last Baron, was appointed; and, as in no list of the Barons, which the reporters give as forming the judicial Bench of the Exchequer, do we find his name, the as-

<sup>1</sup> "2 & 3 Jac. I. in the Record Office, Carlton Gardens.

tural inference seems to be, that his appointment was for the sole purpose I have intimated, viz. to audit the sheriff's accounts, and to transact all the customary business with regard to them, and the other *matters of course* which were merely ministerial.

"It is observable also that, although King James I. in the first year of his reign added a fifth Judge to each of the Courts of King's Bench and Common Pleas, his order did not extend to the Exchequer, which then had only four; yet when the Judges of the two other Courts were, after a few years, again reduced to four, the Exchequer, besides the four legal Barons, still retained the Cursitor-Baron.

"The title, Baron-Cursitor, was evidently adopted in imitation of the ancient Cursitors in Chancery, who, holding the second place under the Chief Clerks or Masters of that Court, were called in Latin *Clerici de Cursu*, and prepared all original writs and other writs of *course*. So also the Barons-Cursitor held a secondary rank, and were solely employed, like their prototypes, in doing the formal business, the settled rule, of the Exchequer.

"Dr. Cowell, in his 'Interpreter,' published in November, 1607, by stating, under the word 'Baron,' that there were only *four* Barons of the Exchequer, manifestly shows that he describes the state of the Court at an earlier period than the date of this book; no less than sixteen months having then elapsed since the appointment of Nowell Sotherton as a fifth Baron. The author was a civilian resident at Cambridge, and, being professionally ignorant of the practice of the Court, was evidently not aware of the change. His account turns out to be a mere abridgement of the narration of the duties of the Barons and other officers written by Sir Thomas Fanshawe, the Queen's Remembrancer, for the instruction of Lord Buckhurst, when he was appointed Lord High Treasurer in 1599; and that narration of course applied to the state of the Court as it existed at that time, and for the twenty previous years, viz.—ever since the introduction of legal Barons.

"Both say that the Lord Chief Baron 'answereth the barre in matter of lawe;' that the second Baron, 'in the absence of the Lord Chief Baron,' doth the like;—that the third Baron, 'in the absence of the other two,' has the same duty;—and that the fourth Baron 'is always a coursetour of the Court, and hath bene chosen of some one of the clerks of the Remembrancers' offices, or of the clerke of the Pipe's office . . . . He informeth the rest of the Barons of the course of the Court in any matter that concerneth the King's prerogative.' This was precisely the position of John

Sotherton (the elder) when all the others had become legal Barons. The words '*always a Coursetour of the Court*,'<sup>2</sup> are evidently used merely as descriptive of the duties of the fourth Baron, not as denoting his title; for neither he nor his predecessors are ever designated by any other title than that of fourth Baron. When, however, on his resignation, all the four regular Barons became legal Barons, and none of them were competent to perform the duties which hitherto had devolved on the fourth Baron, then an extra and an inferior officer was added to the Court to exercise those formal functions; and as by the constitution of the Court these duties could not be performed but by a Baron, he received the designation of Cursitor-Baron; but he was not invested with any judicial power.

"In the next work on the Exchequer which I have met with, published by Christopher Vernon, in 1642, the proper distinction is made. The author there says,—'The chief Baron and *three* other learned Barons, and the puny or Cursitor-Baron, are all in the King's gift. The said Cursitor-Baron being so called because he is chosen most usually out of some of the best experienced Clerkes of the two Remembrancers' or Clerke of the Pipe's Office, and is to informe the Bench and the King's learned counsel from time to time, both in Court and out of Court, what the course of the Exchequer is.'

"It may then, I think, be concluded that Nowell Sotherton was the first person who was added to the four regular Barons, as an appendage to the Court, with the special denomination of Cursitor-Baron; that Thomas Caesar was the second, which will account for the expression in the Inner Temple order, 'commonly called;' and that John Sotherton (the younger) was the third. The latter continued in office in the reign of Charles I.; and when Michaelmas Term was adjourned on account of the plague that raged in the sixth year, we find that the *Esoigns* were kept by Baron Sotherton, that duty being merely a matter of *course*.

"One of the most showy functions of this officer was then, and it is now, to make the public announcement of the Crown's approval of the election of the sheriffs of London and Middlesex: a duty perhaps imposed upon him because the time of their inauguration occurs in the middle of the vacation, when the other Barons are absent. I am in possession of a quaint speech made, or pretended to be made,

<sup>2</sup> "I find that these words are also used in a manuscript, exhibited to the Society on its next meeting after this paper was read, which is stated to be written in 1572. It seems more probably to have been written in 1600; and with regard to the fourth Baron, it adopts precisely the same description as that given by Sir Thomas Fanshawe.—Proceedings, III., 121.

<sup>4</sup> "Considerations for regulating the Exchequer. Per C. Vernon, de Saccario Dom. Regis, 1642, p. 33.

<sup>3</sup> "These instructions seem to have remained in manuscript till 1658, when they were published under the title of 'The Practice of the Exchequer Court, with its several offices and officers. Written at the request of the Lord Buckhurst, some time Lord Treasurer of England. By Sir T. F.,' pp. 23-24.

on one of these occasions by Cursitor-Baron Tomlinson, in the time of the Protectorate, which is so curious in itself, and so illustrative of the view I have taken of the position which the Cursitor-Baron held, that I shall be excused for giving a few extracts.\*

"Francis Warner and William Love were elected sheriffs in 1659, and on their presentation at the Exchequer the Baron commenced thus;—'How do you do, Mr. Warner? God save you, Mr. Love!' He then observes in them three things:—that they are well clad—that they feed well—and that consequently they do well. With regard to the first he remarks:—'Truly, I wish I were a sheriff, so it were not chargeable, for certainly a sheriff never can be a cold—his gown is so warm; and o'my word yours seem to be of excellent good scarlet. Some men may ask why you wear red gowns, and not blew or green.' And then, after shewing why they should not be blue or green, he proceeds:—'But red is the most convenient colour; for indeed most handsome and delectable things are red, as roses, pomegranates, the lips, the tongue, &c., so that indeed our ancestors did wisely to clothe magistrates with this decent and becoming colour. 'Tis true I have a gown too, but they make me wear the worst of any Baron of the Exchequer; 'tis plain cloth, as yee see, without any lining; yet my comfort is, I am still a Baron, and I hope I shall be so as long as I live; when I am dead I care not who's Baron, or whether there be a Baron or no.' 'But,' he says a little further on, 'do you know wherefore you come hither? I don't question but you do; however, you must give me leave to tell yee, for in this place I am a better man than either of you both, or indeed both of you put together. Why then I will tell yee: you come hither to take your oaths before me. Gentlemen, I am the Puise Baron of the Chequer, that is to say, the meanest Baron; for though I am not guilty of interpreting many hard words, yet this hath been so continually beaten into my head that I do very well understand it. However, I could brook my means well enough (for some men tell me that I deserve no better), were it not the cause of my life's greatest misery, for here I am constrained, or else I must lose my employment, to make speeches in my old age, and when I have one foot in the grave, to stand here talking in publike.'

"He tells the sheriffs, among other things, that they are 'the chief executioners,' and adds, 'and now we talk of hanging, Mr. Sheriff, I shall entreat a favour of you; I have a kinsman at your end of the town, a rope-maker; I know you will have many occasions before this time twelve months, and I hope I have spoken in time; pray make use of him, you'll do the poor man a favour, and yourself

no prejudice. Pray, gentlemen, what have you to dinner? for I profess I forgot to go to market yesterday, that I might get my speech by heart. Truly, gentlemen, I count it no dishonour to go to market myself.

Since I went, I find that my servants cheated me of, I warrant, five pounds in the year. They would reckon me two shillings for a leg of mutton, which I can buy as good a one now for five groats and two pence. . . . Now, Mr. Sheriffs, get yee home, kiss your wives, and by that time the cloth's layed, I'll be with you, and so God by till I see you again.'

"The rest of the worthy Baron's address is quite as humorous and odd; but, though it might entertain your lordship in private, it would be derogating from the gravity of this meeting to inflict upon it any further specimens. Whether it be the real speech or only a burlesque on his usual style of address, it is equally curious and interesting."

## LAW AMENDMENT SOCIETY.

### ANNUAL GENERAL MEETING.

On the 24th February, the Annual Meeting of this Society was held, Lord Brougham in the Chair; present also:—Mr. Vernon Smith, M.P., Mr. Fitzroy, M.P., Sir J. Pakington, M.P., the Solicitor-General, Mr. Dunlop, M.P., Viscount Ebrington, M.P., Mr. Napier, M.P., Mr. M. D. Hill, Mr. Hadfield, M.P., Mr. Craufurd, M.P., Mr. Murrough, M.P., Mr. Whiteside, M.P., Mr. Massey, M.P., &c.

Lord Brougham said, the members were no doubt all aware of the reasons which induced the council to change the period of holding the annual meeting from the month of June to the early part of the year. The real and practical reason was, that by holding the meeting at the beginning instead of the end of the Session of Parliament, they would be in a better position to lay the foundation for the measures to be brought into Parliament, or, at least, to broach such measures with the view of furthering the great object of the amendment of the law. When they met at the end of the Session all they could do was to congratulate each other on the improvements which had taken place during the Session, or to condole with each other for those that failed; and he was afraid the latter chapter was much more enlarged than the former. He did not remember a Session which had done more for the amendment of the law than the last; and he would fain hope that the present would not lag behind with "unequal foot." Unhappily they were now engaged in war, and that circumstance affected improvements in many branches of internal economy; but it would be, in his opinion, a cruel and needless addition to the calamities of war, if, on that account, they were to suspend improvement in any branch of internal economy, except such as the existence of hostilities rendered absolutely necessary.

\* "Baron Tomlinson's learned speech to the Sheriffs of London and Middlesex, when they came to be sworn at the Chequer." London: printed in the year 1659.

The *Solicitor-General* moved — “That in the opinion of this meeting it is desirable that the friends of law reform should, at the present time, direct their special attention to the following measures:—1. The consolidation of the law. 2. An amendment of the Common Law Procedure Act of last Session, so as more effectually to secure the attainment of its objects. 3. An amendment in the Law of Bankruptcy. 4. An alteration in the Law of Partnership, with a view to affording greater facilities for the formation of partnerships with limited liability. 5. An amendment in the laws relating to women; including the Law of Divorce. 6. The appointment of a public prosecutor. 7. The more speedy trial of offenders (especially when charged with petty offences), and a general improvement in the administration of the criminal law. 8. The amendment of the Acts of last Session relating to juvenile reformatories.” Although the circumstance which had been referred to by the noble chairman, and which now absorbed the attention of all men in this country, might prevent them from laying as many useful measures as they desired before Parliament, still he hoped that the Session would not pass away without great subjects being introduced to the notice of the Legislature. It would serve a useful purpose if the attention of the Society should be directed to a few of the more important topics of law amendment, with the view of aiding by their suggestions and advice the efforts of their *collaborateurs* in Parliament. A mere accident enabled him to be present at the meeting. He could therefore offer only such observations as occurred to him on the moment in reference to the ample list of subjects to which the special attention of the Society was to be directed, reminding the Society that what he might say was not to be taken as a pledge or representation of measures to be brought forward, or anything more than the expression of his own individual opinion. He did not agree in the regret that many attempts at law improvements had failed, because he knew that the seeds which were then sown would fructify and ripen under more auspicious circumstances. The first subject, the consolidation of the law, was in itself enough to engage the attention not of one but of many men. It was the subject which first attracted his attention the moment he held the office of *Solicitor-General*; and the first suggestion he made to the Lord Chancellor was on this very matter; and he must say it was promptly and most heartily responded to by him. The Common Law of England consisted of great principles of moral conduct and duty which had been expounded and unfolded by the wisdom of Judges, and made applicable to the emergencies of society. These were embodied and depicted at present in the great repositories of legal learning; but he believed that they were capable of being embodied, consolidated, and expressed in short rules of application, and that if arranged under one of the great heads of the principles of moral conduct, such as

arrangement, order, and method would form *pro tanto*, an approximation to a digest of that portion of the law. But that which was the first requisite, and the most readily capable of condensation and embodiment, was the Statute Law of England. Here there was at present but a great scene of chaos, confusion, and disorder, and it became necessary to consider whether by consolidation something like light and order might not be eliminated from what was now one mingled mass of confused elements. It appeared to the Lord Chancellor that this was beyond the power of attainment. But he did not hesitate to say that—he would not say a consolidation, but—a Digest of the Statute Law might be effected. By a Digest of the Statute Law he wished it to be clearly understood, he did not mean that they should have the Statutes simply consolidated, but that they should set out with something like a philosophic distribution and arrangement of the subject, according to which the great heads of legislation and rules of law would be divided, so as that each division might throw light on the other, and stand in harmonious relation. By such a methodical arrangement of the different branches of the law and the rules of conduct enjoined by the state, the law would become a science, its study would interest by reason of the philosophic analysis it would present, and instead of being a disorderly and miscellaneous mass of crude enactments, it would assume the characters of regularity, method, and certainty. There was one particular subject which had long interested him, and had especially engaged his attention. He felt great anxiety to see the day when real property might, in the hands of its possessor, become a commodity as saleable and as readily converted into money as the house or furniture which he possessed. This was no vain imagination, or Utopian dream. From two things which were already in operation he believed they might devise a plan by means of which, without any investigation of title, the man who purchased an estate at Garroway's and inscribed his name on a register, should be able to call that estate his own, and have it guaranteed to him against all the world. If that were accomplished, the man who devised his estate to be sold for the benefit of his family could calculate when his estate would be sold, whereas now he could not be certain whether it would be put up for sale in one or five or ten or twenty years. It was only the other day that he was engaged as counsel in putting an end to a litigation on a contract for sale which was made in 1802. The system of transfer adopted in the Bank of England might with equal benefit and security be applied to land as to money. The principle of the Court of Encumbered Estates in Ireland was found to have worked well.

The *Chairman* said, that when the Bill for the establishment of that Court was before the House of Lords he opposed it, having more than doubled the policy of establishing it; but it was completely converted by its successful working into

The *Solicitor-General* said, the evil of that Court was that it stopped with giving a parliamentary title, whilst what it wanted was that it should not only give a parliamentary title, but continue it. And this might be accomplished by a simple transfer of the estate from the seller to the purchaser, to be indicated by the substitution of the name of the latter for that of the former in the registry-book to be kept for that purpose.

Another subject which greatly interested him was the improvement of *legal education*; and he dwelt upon this the more because he saw the great evil resulting from the vicious system that now existed. He wished to see established in the metropolis a great university, of which the four Inns of Court should form the principal elements. He desired to see an institution of this kind superadded to the education given in their public schools, and in the other universities, in order that the member of the Legislature, the magistrate, and the jurymen, might be instructed in the proper duties of the citizen, and obtain some knowledge of the law which they were to obey, to administer, and to carry out.

There was no subject of more social interest or of more political importance than an alteration in the law of partnership; and they proposed fairly to enter into a consideration of it. The law relating to women and divorce had long engaged the attention of many. As an individual he should never be content till he saw that great anomaly in the jurisdiction of this country, namely, the Ecclesiastical Courts, completely removed. In considering the law of divorce, he hoped opportunity would be taken to redress the great evil and injustice and cruelty under which women laboured. In conclusion, he would only observe that amongst the recollections of a life devoted to the amendment of the law, their noble chairmen would derive the liveliest pleasure in remembering how many valuable amendments had been promoted by the labours of this society, of which he had been the great founder.

Sir J. Pakington seconded the motion. He said, that they were all reformers, under whatever banner of political opinion they chose to enlist themselves. And there was no man of ordinary intelligence and reflection who must not feel the necessity which existed for the reparation and improvement of our institutions. There was nothing more dangerous for a nation than the self-conceit in which all were too prone to indulge. Late events roused them from their dream with regard to their military institutions; and, if time permitted, it would not be difficult to remind those who heard him of the many other essential and important respects in which they stood in need of great and material improvement. Animated with these sentiments he could not but express his respectful admiration of the long career of their noble chairmen. They must all feel that when this generation should have passed away, and party differences ceased, one great name would stand out in the page of history—the name of

one who had devoted a gigantic intellect and incessant exertions for the benefit of his fellow-men and the improvement of his country, and who thereby entitled himself to the admiration of posterity. For himself, not being a lawyer, he felt that he could do little to promote the objects of the Society. He belonged to that amphibious class of persons known by the name of Chairmen of Quarter Sessions—who, without being lawyers, were obliged to hear a great deal about law, and to administer it as best they could according to the light that was in them. Their duties would be made much more easy if something like order and system were introduced into their Statutes. As a landed proprietor, he concurred in all that had been said by the *Solicitor-General* upon the unnecessary and unwise impediments to the transfer of land, and he hoped that the great ability which distinguished his learned friend would, in his place in Parliament, be devoted to an attempt to correct this great blot in our institutions. Amongst the improvements in their system, he hoped one of the earliest would be one for the more speedy trial of offenders, and for a better administration of the criminal law. He introduced a Bill into the House of Commons for giving summary jurisdiction to the magistrates in cases of petty larceny not exceeding one shilling. He was sorry to be compelled to say that the strongest opponents of that modest measure were the lawyers, who in their zeal for trial by jury could not be induced to consent to its passing. He rejoiced that the principle of dealing with juvenile criminals in the spirit of reformation had been recognised by the Legislature, though much still remained to be done in that direction. He could only say that his exertions as a member of the Legislature would not be wanting to promote any useful reforms.

Mr. *Hailefeld* suggested the propriety of having but one probate for wills, and the necessity of getting rid of the mortmain difficulties in the case of devises for charitable purposes.

Mr. *Whiteside*, Mr. *M. D. Hill*, Mr. *Fitzroy*, Mr. *Napier*, and Mr. *Anderson* addressed the meeting; and urged the expediency of reform.

The *Chairman* remarked, that the time was now ripe for a Commission to consolidate the Bankruptcy Laws for the three kingdoms. He saw no reason to despair of future law amendment because of the past. On the contrary, enough had been done to comfort them with regard to future progress. That progress, as in all things human, must be gradual; and perhaps it would be all the better for being so. But, if they had a minister of justice, as suggested by Mr. *Napier*, that progress, without being less safe, would be more rapid. He had no hesitation in saying that it was most disgraceful to the Legislature to have thrown out Sir J. Pakington's Bill. Nothing could be more decisive of the evil of the present system than the fact stated in the House of Lords that in 1841, in one of the counties of England—



Devonshire—there were 86 cases of petty larceny under one penny, for which all the machinery of circuit and quarter sessions was put in motion to try them. Some of these unhappy persons were 36 days in prison before they were tried; and when they were tried and found guilty, they were perhaps further confined for 24 hours. But what if they were innocent? Why 36 times a greater punishment was inflicted on these innocent persons than on the persons who were tried and found guilty. Their present system of legislation was answerable not only for the state of the law, but for the manner in which the law was drawn, which frequently rendered it—he would not say difficult—but impossible for the Judges to construe the Acts passed.

The motion having been carried,

Viscount *Ebrington*, M.P., proposed, and Mr. *Craufurd*, M.P., seconded a vote of thanks to the chairman, which having been duly acknowledged, terminated the proceedings.

## MANCHESTER LAW ASSOCIATION.

### ANNUAL DINNER.

THE annual dinner of the members of the Manchester Law Association was held on the 15th inst.; about fifty gentlemen were present. Mr. T. L. Rushton, the president, occupied the chair; and Messrs. T. Baker, J. Street, and T. P. Bunting, officiated as vice-presidents. B. Nicholls, Esq., mayor of Manchester, and William Ross, Esq., mayor of Salford, were present as guests; and Messrs. Payne and H. W. Collins (hon. secretary) attended as a deputation from the Liverpool Law Association.

After the usual loyal and patriotic toasts, which were eloquently proposed by the Chairman and Mr. Alderman Hoelis,

The Chairman proposed "The Manchester Law Association." As far as the members were concerned, they knew by experience that this Association, and others of a kindred nature, tended in a very great degree to establish feelings of confidence, kindness, and goodwill towards each other, that very much diminished the difficulties that otherwise would exist in the conduct of business where the interests of conflicting parties had to be represented; and he was very sure, too, that such associations, and such annual gatherings, contributed very much to save clients' pockets. A still greater advantage was, that the Association gave the members opportunities of meeting, and, in discussion, exchanging experiences as to the working of existing laws, and the desirability and best mode of making those changes that from time to time became necessary. Laws which, in their inception, were very proper, and adapted to the state of society as then existing, became—by changes of feelings, habits, and wishes, and in the general position of society—entirely unfitted for that for which they were intended; but, although the necessity for change was evident enough, there had arisen such a complication of those laws with the in-

tricate reticulations of various bodies and systems in society, that it was very difficult to decide what should be altered, and it required a careful hand to prune down what seemed to be excrescences.

By the incautious removal of abuses, more mischief was done than would often result from allowing what was considered to be an evil to continue, and of necessity, to some extent, to adapt itself to changes in society. Every lawyer must have seen the blank faces of clients on being told of difficulties and anomalies that existed, and that had resulted in the way indicated; and every lawyer, too, must have heard some such retort as, "Is this your boasted law—the perfection of reason and the completion of science and knowledge?" The complex state of society caused new descriptions of property to arise, and in many things there were refinements which made legal questions become daily more and more subtle, and called for more acumen in dealing with them; and therefore called for more care in the provision and revision of laws. Any one who knew the difficulty of removing an abuse in law—how first its existence was denied, how it was next palliated, on the ground of the evil of change, and then how delay was sought, until every expedient was had recourse to, to continue that which was bringing profit to somebody—any one who knew these things, must feel the importance of a body who would devote themselves to these subjects, and who had the requisite knowledge and ability to bring about a change for the benefit of society at large.

He might be told that public opinion would do all this. True, public opinion was very powerful, when it could be brought to bear; but it had no continuity of purpose—it was diffusive and lacked concentration; though very powerful to destroy, it was wholly powerless to reconstruct; and unless there was somewhere the power to reconstruct, the influence of public opinion was an unmitigated evil. That the Association had succeeded in many, and important, respects, could be shown by the annual reports. As to one branch of its duty, that of discouraging malpractices, whether amongst practitioners or those unauthorised to practise, the mere knowledge of the existence of the Society was sufficient to prevent a great amount of evil, and when called upon to interfere, the duty was easy. It was a great advantage that the Society combined the influence of so many practitioners in different districts, and was at the same time enabled to bring them into co-operation with similar bodies—such as the Liverpool Association, and the Metropolitan and Provincial Association; and by this means, there was really constituted a public opinion, formed by those who were the most interested in reforms, and who had the knowledge and experience necessary to enable them to decide what should be changed, and in what way the change could best be effected. They might truly congratulate themselves upon the position of their association: there had been a considerable increase in the number of mem-

bers during the year, and financially the body had never stood better than at present; but this only made his own position the more onerous—for woe betide him, if he left it in a worse state than that in which he found it.

Mr. *Thomas Baker* responded. The Society had amply answered the purposes for which it was established; and it now numbered amongst its members not only a very great proportion of the attorneys at present practising in this city, but also a majority, he believed, of those practising in the immediate neighbourhood. It had very much facilitated the transaction of business—it had been the means of elevating the professional character—and it had enabled the attorneys materially to affect the legislative mind of the country. If for nothing but what they had done to cause the rejection of that gigantic scheme for mischief, the Registration of Assurances Bill, this and kindred Associations would have a strong claim upon the favourable consideration of the whole community. When the Public took that interest it ought to take in the various schemes for new laws, and the efforts made year after year for the amendment of laws in existence, then, and not until then, would the labours of this and the kindred Associations be properly appreciated; and then, too, would the character of the attorney be held in higher esteem than that which had been customary for some years past. He hoped that the time was not far distant, when all candidates for admission as attorneys would have to undergo a system of education which should qualify them as to legal knowledge, thoroughly discipline their minds, and make them gentlemen.

After giving a sketch of the proceedings of the Association during the past year, Mr. *Baker* said that happily many of the Bills brought into the House of Commons during the past Session—and to which the Committee had given much time—had been consigned to "the tomb of all the Capulets." If any of them should hereafter re-appear, it was to be hoped that they would be in amended form, and contain some of the provisions suggested by the Committee. There were two of the Bills that seemed to him to be required by the emergencies of the country; and he would especially mention the Ecclesiastical Courts' Bill, for assuredly the position of matters with regard to probates was a disgrace and a denial of justice. The sooner, therefore, that that Bill was disinterred and brought forward with the necessary amendments, and made the law of the land, the sooner would this Association and the public generally have very great cause for rejoicing. The other Bill was the Mortmain Bill; for he was satisfied that the charitable trusts of the country were in a state very much to require the improvements which that Bill, when amended, was likely to bring about.

The *Chairman* proposed "The Mayor and Corporation of Manchester," to which *B. Nichols, Esq.*, responded; and "The Mayor and Corporation of Salford," to which *Wm. Ross, Esq.*, responded.

Mr. *George Thorley* proposed "The Metropolitan and Provincial Law Association." That body, which had now advanced to a position of very considerable power and authority, might be said to have owed its origin to the Manchester Association. For many years, it was found that the objects of the Association could not be conducted in distant parts of the country, or in the metropolis, in other than an inefficient manner, and negotiations were set on foot which resulted in the establishment of the Metropolitan and Provincial Law Association, which had ever since co-operated with the Manchester and other Association, in promoting ends of common benefit to the Profession and the Public. Not only in matters of legislation, but in raising the status of solicitors, had the extended influence of the co-operating Associations been most beneficial. The time had been, when considerable jocularly was indulged in in the House of Commons, if anything were proposed or opposed by the Profession; and any one who proposed a tax upon attorneys was sure of support from all sides of the House. On one occasion, a gentleman who was appealed to, replied, "Certainly, I am not overburdened with modesty; but as certainly I am not one who would undertake to conduct in the House of Commons anything having for its object to relieve attorneys from a tax." But, in the establishment, first of the Manchester Association, and then of the others in different parts of the kingdom, the attorneys showed that they recognised the wisdom of the old proverb, that those who wished to be assisted must first help themselves. By co-operation, they had risen from a state of powerlessness in Parliament to be able to maintain their own position there; and they had even succeeded in successfully opposing the Registration of Assurances Bill, notwithstanding that it was supported by the whole of the press, that it had been foreshadowed in the Queen's Speech, and was one of those things that the ministry stated it to be their resolution to carry. It was now admitted that the measure was one that never ought to pass; and if anything came out of the endeavour to pass it it would no doubt be a bill very much modified, and calculated to save that immense amount of money which Lord St. Leonards showed, would have amounted to millions sterling, in useless experiments. The suggestions made by the Metropolitan and Provincial Law Association, especially as to equity, had been adopted by the Commissioners of the Crown; and their result had, as he understood, been acknowledged with gratitude by those practising in Courts that had been affected by such of them as had been introduced into measures that had passed the Legislature. After referring to the proceedings at the meeting of the Metropolitan and Provincial Association, in Leeds, last year, Mr. *Thorley* dwelt upon the necessity that existed—as, he said, was admirably enforced by Mr. John Hope Shaw, at Leeds—for professional men being enabled to enforce, through the

press; the objects they had in view; and also what was admitted by almost all, that the interests of the Public and of the Profession were identical. They might well be proud of their present position, as professional men: They had now at the head of their own Association a gentleman who had been twice elected mayor of the borough in which he resided; and last year, the Liverpool Association was presided over by the chief magistrate of that great town.

Mr. T. Taylor proposed "Our friends from Liverpool, and the Liverpool Law Association;" to which Mr. Payne responded.

Mr. T. P. Bunting proposed "The Lord Chancellor and the Judges."

Mr. Knowles; Mr. James Street, the Treasurer of the Association; Mr. John Barlow; Mr. Speakman, the late Secretary; and Mr. F. Marriott, the present Secretary, addressed the meeting, in proposing and answering several toasts on the valuable services rendered by the Committee and officers during the past year, and which showed the energetic and prosperous state of the Society.

[The speakers at this meeting do not appear to have been aware that any exertions have been used during the last 20 years by the Incorporated Law Society for the benefit of the Profession.—Ed.]

### LORD ST. LEONARDS' PURCHASERS' PROTECTION BILL.

*To the Editor of the Legal Observer.*

SIR,—I had hoped that the relief promised by Lord St. Leonards would be more extensive than his proposed measure, as given in your last; show it to be. With your permission I will offer a few suggestions, the adoption of which would, I think, render the measure more complete.

1st. I object to the registration of the judgments and decrees of the Palatine Courts being with the Prothonotaries of those Courts. It should be with the Master of the Common Pleas. I can see no reason why the purchasers of land in Lancashire or Durham should be put to the expense of a double search; nor why, since the High Court of Chancery, the Queen's Bench, and the Exchequer are content to register with the Common Pleas, the local tribunals should object to do the same.

2ndly. The Crown should be compelled to re-register every five years.

3rdly. When assignees have any claims against the future property of a bankrupt or insolvent, they should be compelled to register and re-register in the same manner as judgment creditors; and the registry should be in the same list with judgments, in order to avoid the necessity for a double search.

4th. The registry of rent charges and annuities should, if possible, be in the same list with judgments, for the reasons above assigned.

If the above hints should be acted upon much of the expense, inconvenience, and uncertainty to which purchasers are at present subject, would be avoided. For myself, however, I am the advocate of a more sweeping change. The experience of your readers will bear out my assertion, that of 500 searches not more than one (if that) results in an incumbrance being found. If it be admitted—as it can hardly be denied—that to tax 500 persons for the protection of one is an outrage upon common sense; the inference is plain, that the Crown, the judgment creditor, and the assignee, instead of being privileged by law to "sleep upon their rights," should, like other people, be left to the care of their own diligence and sagacity. The case may not seem so clear against the *assignant* and the *suitor*. As regards the former, however, as he has the means of giving notice of his claim by seeing that a memorandum thereof is indorsed upon the principal deed relating to the property affected by it, if he neglect so simple a precaution, his remissness might fairly be punished by giving the title of an innocent purchaser the preference. And with respect to the *suitor*, his interests might be considered to be sufficiently protected if the Court of Chancery were to adopt the practice of ordering an indorsement; on the principal deed relating to the property in dispute, of a memorandum, giving notice that the property was the subject of a *lis pendens*.

T. C.

*Manchester.*

### POOR LAW RETURNS TO PARLIAMENT.

[No. 66, FEB. 22, 1855.]

|   |            |
|---|------------|
| Number of Unions in England and Wales . . . . . | 620        |
| Parishes comprised therein . . . . .            | 14,111     |
| Population in 1851 . . . . .                    | 16,285,861 |
| Number relieved in 1854 . . . . .               | 819,865    |
| — " — 1855 . . . . .                            | 840,790    |
| Increase between 1854 and 1855 . . . . .        | 20,735     |

|   |            |
|---|------------|
| Expended in half-year ended Michaelmas, 1853. |            |
| In-maintenance . . . . .                      | £ 335,691  |
| Out-relief . . . . .                          | 1,279,006  |
|   | £1,614,697 |

|   |            |
|---|------------|
| Expended in half-year ended Michaelmas, 1854. |            |
| In-maintenance . . . . .                      | £ 446,184  |
| Out-relief . . . . .                          | 1,479,959  |
|   | £1,926,143 |

|   |         |
|---|---------|
| Exclusive of relief under Local Acts, Gilbert's Act, and 43 Eliz., amounting for half year to . . . . . | 177,700 |
|---|---------|

## PARLIAMENTARY REPORTS AND RETURNS.

### COPYHOLD COMMISSION.

The following is an abstract of the Thirteenth Report of the Copyhold Commissioners under the 4 & 5 Vict. c. 35, s. 3.

|   |     |
|---|-----|
| It appears that there have been of Clerical Enfranchisements and Commutations | 390 |
| Of Collegiate, ditto . . . . .  | 24  |
| Of Lay ditto . . . . .  | 211 |
| Total . . . . .   | 634 |

|                                     |         |     |      |
|-------------------------------------|---------|-----|------|
| The consideration for these         | £       | s.  | d.   |
| have been payment in full . . . . . | 150,970 | 19  | 9    |
| Rentcharges . . . . .               | 2,787   | 13  | 9    |
| Land . . . . .                      | 1209A.  | 2R. | 33P. |

The Commissioners append a list of (223) Enfranchisements effected, or which are now in an advanced state.

### RATES OF POSTAGE.

By a Treasury warrant, dated the 12th day of February, 1855, the Commissioners direct, that so much of a warrant dated January 23 last past, as is contained in clause 6, shall be repealed, and that from and after the 1st day of March next, any packet sent, or tendered or delivered to be sent, by post as therein mentioned, and set forth in Schedule B., which shall contain any letter, closed or open, such letter may be taken out by any officer of the post-office and forwarded to the address, to be charged the full rate of postage as an unpaid letter, and such an additional rate as is chargeable on a packet not exceeding 4 lb. weight, the packet, if postage be paid when posted, to be forwarded without extra charge.

By another warrant, dated the 19th day of February, 1855, the Commissioners direct that, from and after the 1st day of March next, the Postmaster-General may wholly remit the rates of postage now payable on letters, packages, &c., re-directed and again forwarded by the post between places in the United Kingdom, if re-directed by an officer of the Post Office.

And by another warrant, dated the 22nd day of February, 1855, the Commissioners have directed that all packets transmitted under the provisions of such last-mentioned warrant shall be charged a uniform single rate of postage as therein set forth against the places respectively mentioned in Schedule B. attached to the said warrant, viz:—

- On every packet not exceeding 4 lb. weight, 6d.
- Above 4 lb. weight, two rates of postage.
- Above 1 lb. four rates.
- Above 3 lb. six rates.
- And for every additional lb. or fraction of a lb. two more additional rates of postage.

No packet must exceed in length or breadth two feet.

No packet to pass between the United Kingdom and the East Indies, or New South Wales, shall under these provisions pass by post, if it exceed 3 lb. in weight.

This warrant is not to affect the transmission by post of printed newspapers or publications allowed to pass by post under the newspaper privilege.—From the *London Gazette* of February 23.

### NOTES OF THE WEEK.

#### IMPERFECT VENTILATION OF THE COURTS

At the Sittings at Nisi Prius, in London, before Chief Justice Jervis and a Special Jury, on the 21st February, the imperfect ventilation of the Court was again noticed. Upon several occasions lately his Lordship has complained that the ventilation of this Court was conducted in a very imperfect manner, and particularly that there were unpleasant smells in the place. At length Mr. Bunning, the city architect, was summoned before his Lordship, and directed to do something to stop the nuisance, and he accordingly had some alterations made to improve the ventilation; but at the sitting of the Court, on the 21st, it was found that the ventilating apparatus somehow or other would not work, and that consequently no warm air was coming into the Court. It was not long, of course, before complaints were made of the cold, and the Court-keeper was sent for, but he was unable to do anything to afford relief. Mr. Sergeant Byles said he had already been out to complain, for it was so cold that the Bar were really in a dangerous position. A jurymen asserted that his feet were like ice.

His Lordship said, he had complained to the City architect, and had received a letter from him to say that the ventilation had now been made absolutely perfect; but it appeared that the stoves had been made so perfect that they could not be lighted. He really must adjourn the Court, for the temperature was so low that it was positively dangerous. He was obliged to sit with his hands in his pockets to keep his fingers warm. The neglect was scandalous, but he would undertake to say that if the Aldermen were dining anywhere they would take care to have the place warm enough.

The Court-keeper, on being sent for a second time, thought that if the gas was lighted it would produce some warmth; and he accordingly lighted the gas, which was kept burning during the remainder of the day.—From the *Daily News* of 22nd Feb.

#### ECCLIESIASTICAL COURTS JURISDICTION IN DEFAMATION ABOLITION BILL.

A new Bill has been introduced by Mr. R. Phillimore, which, after reciting that the jurisdiction of the Ecclesiastical Courts in suits for

defamation has ceased to be the means of enforcing the spiritual discipline of the Church, and has become grievous and oppressive to the subjects of this realm, proposes to enact that, from and after the passing of the Act, it shall not be lawful for any Ecclesiastical Court in England or Wales to entertain or adjudicate upon any suit for or cause of defamation, any Statute, law, canon, custom, or usage to the contrary notwithstanding.

#### LAW APPOINTMENTS.

*William Henry Roberts, Esq.*, has been appointed Recorder of Grantham, in the room of John Hildyard, Esq., deceased.

*George Boden, Esq.*, has been appointed Recorder of Stamford, in the room of John Hildyard, Esq., deceased.

*Frederick Walford, Esq.*, has been appointed

Recorder of Saffron Walden, in the room of Vicesimus Knox, Esq.

*J. J. Lonsdale, Esq.*, has been appointed Judge of the County Court (Circuit No. 20), in the room of the late John Hildyard, Esq.

*H. W. Cripps, Esq.*, has been appointed Official of the Archdeacon's Court at Oxford, in the room of the late R. J. Phillimore, Esq.

*David Hector, Esq.*, is to be Senior Deputy Advocate, in the room of Thomas Cleghorn, Esq., appointed Sheriff of Argyll.

*Henry Churchill, Esq.*, has been appointed Deputy-Coroner of Oxfordshire.

*J. Mellor, Esq., Q.C.*, has been appointed Recorder of Leicester, in the room of the late John Hildyard, Esq.

The Queen has been pleased to approve of Mr. Herman Dirs Mertens, Solicitor, as Consul at Margate, for the King of the Belgians. —From the *London Gazette* of Feb. 27.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

#### Lords Justices.

*Chaffers v. Baker.* Feb. 19, 1855.

TAKING BILL PRO CONFESSO AGAINST INFANT DEFENDANT ABROAD.

*A motion was refused, on appeal from and confirming the decision of Vice-Chancellor Kindersley, to take a bill pro confesso against an infant defendant residing abroad with his father, upon whom substituted service of the copy bill had been ordered, on an affidavit that service on the infant was impracticable.*

THIS was a motion under the 31st Order of May 8, 1845, on appeal from Vice-Chancellor Kindersley, to take this bill *pro confesso* against an infant defendant who was residing with his father in Germany. It appeared that an order had been made for substituted service of the copy bill on his father upon an affidavit that service on the infant was impracticable.

*W. H. Terrell*, in support, referred to Order 29 of May 8, 1845, which provides, that "if any defendant, not appearing to be an infant or a person of weak or unsound mind unable of himself to defend the suit, is, when within the jurisdiction of the Court, duly served with" a copy bill, "and refuses or neglects to appear thereto within eight days after such service, the plaintiff may, after the expiration of such eight days and within three weeks from the time of such service, apply to the record and writ clerk to enter an appearance for such defendant: and no appearance having been entered, the record and writ clerk is to enter such appearance accordingly, upon being satisfied by affidavit that the" copy bill "was duly served upon such defendant personally or at his dwelling-house or usual place of abode; and after the expiration of such three weeks, or after the time allowed to such defendant for appearing has expired, in any case in which the record and writ clerk is not hereby required to enter such appearance, the plaintiff may apply to the Court for leave to enter such ap-

pearance for such defendant; and the Court, being satisfied that the" copy bill "was duly served, and that no appearance has been entered for such defendant, may, if it so thinks fit, or the same accordingly;" and to Order 32, which directs, that "if upon default made by a defendant in not appearing to or not answering a bill, it appears to the Court that such defendant is an infant or a person of weak or unsound mind not so found by inquisition, so that he is unable of himself to defend the suit, the Court may upon the application of the plaintiff order that one of the solicitors of the Court be assigned guardian of such defendant, by whom he may appear to and answer or may answer the bill and defend the suit."

The *Lords Justices* said, that the decision of the Vice-Chancellor must be affirmed.

#### Master of the Rolls.

*Ripley v. Tiplady.* Jan. 27, 1855.

LIABILITY OF PLAINTIFF'S SOLICITOR TO COSTS ON NEGLECTING TO PROCEED ON REFERENCE.

*The plaintiff's solicitor, in a suit by an equitable mortgagee, had taken no proceedings since Jan. 28, 1853, in the reference to the Master to take accounts and for a sale, nor had the parties attended the summonses issued by the Master under the 15 & 16 Vict. c. 80, s. 7: Held, that the solicitor was liable for the costs occasioned by such negligence.*

IN this claim by an equitable mortgagee, it appeared that the plaintiff's solicitor had taken no proceedings since Jan. 28, 1853, in the reference to the Master to take accounts and for a sale, and that a summons was accordingly issued by the Master under the 15 & 16 Vict. c. 80, s. 7,<sup>1</sup> but which neither party attended,

<sup>1</sup> Which enacts, that "in order as expeditiously as may be to wind up all the causes,

nor on a second summons which issued. The Master thereupon made his report under s. 8, and the plaintiff now moved to continue the taking of the accounts under the former order, and for the costs to be paid by his former solicitor.

J. H. Palmer in support; *Roupe* for the defendant; *Cracknell* for the solicitor.

The Master of the Rolls said, that the excuse by the solicitor of a balance being due from the agent was insufficient, as he had never applied to the plaintiff for money, but promised to proceed with the suit. He must therefore pay the costs occasioned by his negligence.

Anon. Feb. 8, 1855.

**AFFIDAVIT. — FILING, ALTHOUGH INTERLINEATIONS NOT VERIFIED.**

*An application was granted for a direction to the clerk of records and writs to file an affidavit sworn abroad, notwithstanding the interlineation of the Christian names of two persons without the same being authenticated by the initials of the party administering the oath or being referred to in the jurat, where in a subsequent part of the affidavit such names were in full with the usual words "the said."*

THIS was an application for a direction to the clerk of records and writs to file an affidavit which had been sworn abroad, notwithstanding the interlineation of the Christian names of two persons without being authenti-

matters, and things, which may from time to time be depending before or have been referred to the Masters in Ordinary of the said Court, it shall be lawful for every Master, at any time after the passing of this Act, to summon as he shall deem fit all or any of the parties to any cause, matter, or thing so depending, or their solicitors, and thereupon to proceed with such cause, matter, or thing, and give such directions and make such order as he may think necessary for the purpose of settling and winding up the same; but any such order shall be subject to be discharged or varied by the Court upon application made for that purpose; and the Master shall be at liberty to proceed for the purposes aforesaid in the absence of any of the parties or solicitors neglecting or refusing to attend the summons; and sect. 8, "in case the Master shall be unable, by reason of the conduct of parties or otherwise to finally dispose of any cause, matter, or thing, he shall be at liberty to dispose of any part thereof within his power, and to report or certify on the whole of the cause; and upon such report or certificate the Court shall make such order as it shall think proper on all or any of the parties, for the further prosecution of the suit or matter, or for the final disposal thereof, and for the payment of the costs thereof, including any of the costs which may have been incurred by reason of the conduct of the parties."

cated by the initials of the party administering the oath or referred to in the jurat. It, however, appeared that in a subsequent part of the affidavit the names appeared in full with the usual words "the said."

*Shapter* in support.

The Master of the Rolls granted the application.

**Vice-Chancellor Kindersley.**

*In re Rye's Trust.* Jan. 29, 1855.

**ORDER ON PETITION FOR MAINTENANCE TO INFANT.—TRUSTEE RELIEF ACT.**

*Order made on petition for allowance of maintenance to an infant out of a fund paid into Court, under the 10 & 11 Vict. c. 96, notwithstanding the 15 & 16 Vict. c. 80, s. 26,—as a petition was required on application, under the 10 & 11 Vict. c. 96.*

THIS was a petition for the appointment of guardian to an infant, and for the payment of maintenance out of fund paid into Court under the 10 & 11 Vict. c. 96.

*Lonsdale* referred to the 15 & 16 Vict. c. 80, s. 26, which enacts, that "the business to be disposed of by the Master of the Rolls and Vice-Chancellors respectively while sitting at Chambers, shall consist of such of the following matters as the Judge shall from time to time think may be more conveniently disposed of in Chambers than in open Court," viz. "applications as to the guardianship and maintenance of infants."

The Vice-Chancellor said, that the order would be made as prayed, as a petition must be presented in cases under the 10 & 11 Vict. c. 96.

**Vice-Chancellor Wood.**

*In re Dunster's Trust.* Feb. 19, 1855.

**INVESTMENT OF FUND PAID IN UNDER TRUSTEE RELIEF ACT.**

*An application was granted for the insertion of a direction in the order made on a petition for the investment of a sum paid into Court under the 10 & 11 Vict. c. 96, for such investment to be made in the new 3 per cents instead of consols.*

THIS was an application for the insertion of a direction in the order made on this petition for the investment of a sum paid into Court under the 10 & 11 Vict. c. 96, for such investment to be made in the new 3 per cents, instead of consols.

*H. F. Jackson* in support.

The Vice-Chancellor granted the application.

**Court of Queen's Bench.**

*In re ———, gent., one, &c.* Jan. 21, 1855.

**ATTORNEY.—RULE TO ANSWER AFFIDAVIT.—CHARGE OF FRAUD AND CONSPIRACY.—INDICTMENT.**

*A motion for a rule nisi was refused on an*

attorney to answer the matters of an affidavit, where they amounted to a charge of fraud and conspiracy connected with matters not in the exercise of his profession as an attorney, and held that he must be proceeded against by indictment.

THIS was a motion for a rule nisi on Mr. —, an attorney of this Court, to answer the matters in an affidavit.

*Petersdorff* in support.

The Court said, that as the matters in question amounted to a charge of fraud and conspiracy connected with matters not in the exercise of his profession as an attorney, he must be proceeded against by indictment, and the rule would therefore be refused.<sup>1</sup>

### Court of Exchequer.

*Morton v. Holt.* Jan. 26, 1855.

COUNTY COURTS.—REMOVAL OF JUDGMENT INTO SUPERIOR COURT TO ISSUE C.A. SA.

*A rule was made absolute to set aside a Judge's order removing into this Court a judgment recovered on a plaint in a County Court for the purpose of issuing execution thereon; and also to set aside such execution; and held that the County Courts under the 9 & 10 Vict. c. 95, are not "inferior Courts of record" within the 19 G. 3, c. 70, s. 4; and the 1 & 2 Vict. c. 110, s. 22.*

THIS was a rule nisi to set aside the *ca. sa.* which had issued in this action, which was originally brought in the Windsor County Court, but removed into this Court after judgment, for the purposes of issuing execution by the order of *Martin, B.*, at Chambers.

*Griffiths* showed cause against the rule, and referred to the 19 Geo. 3, c. 70, s. 4, which enacts, that "in all cases where final judgment shall be obtained, in any action or suit in any inferior Court of record, it shall and may be lawful to and for any of his Majesty's Courts of Record at Westminster, upon affidavit made and filed therein of such judgment being obtained, and of diligent search and inquiry having been made after the person or persons of the defendant or defendants, or his, her, or their effects, and of execution having issued against the person or persons, or effects, as the case may be, of the defendant or defendants, and that the person or persons, or effects of the defendant or defendants are not to be found within the jurisdiction of such inferior Court," "to cause the record of the said judgment to be removed into such Superior Court, to issue writs of execution thereupon to the sheriff of any county, city, liberty, or place against the person or persons, or effects of the defendant or defendants in the same manner as upon judgments obtained in the said Courts at West-

minster," and to the 1 & 2 Vict. c. 110, s. 22, which provides that "in all cases where final judgment shall be obtained in any action or suit in any inferior Court of Record in which at the time of passing this Act, a barrister or not less than seven years' standing shall act as judge, assessor, or assistant in the trial of causes," "it shall be lawful for the Judges of any of her Majesty's Superior Courts of Record at Westminster," "upon the application of any person who at the time of the commencement of this Act shall have recovered, or who shall at any time thereafter recover such judgment," "upon the production of the record of such judgment," "to order and direct the judgment" "of such inferior Court to be removed into the said Superior Court," and immediately thereupon such judgment "shall be of the same force, charge, and effect as a judgment recovered in" "such Superior Court, and all proceedings shall and may be immediately had and taken thereupon, or by reason, or in consequence thereof, as if such judgment so recovered" "had been originally recovered in" "the said Superior Court."

The Court (without calling on *Lush* in support) said, that the County Courts were created by Statute, and were not inferior Courts of Record under the Statutes referred. The rule would therefore be made absolute to discharge the defendant, upon the terms he should not bring any action.

*Ross v. Greene.* Feb. 5, 1855.

DECLARING AFTER A YEAR, WHERE ORDER FOR SECURITY FOR COSTS AGAINST PLAINTIFF ABROAD.

*A plaintiff being in Canada at the time of the issue of a writ, was called on by order to find security for costs, and in the meantime the proceedings were stayed: Held, that on his return to England he could deliver a declaration upon discharging the order for security for costs, as his non-compliance with the order was not a wilful default.*

THIS was a rule nisi to set aside the declaration in this action, on the ground that the plaintiff had not declared within a year. It appeared that he was a resident in Canada at the time of the writ being issued, and that the defendant had obtained an order to stay until security was given for costs. The plaintiff returned to England in December last, and obtained an order to discharge the order for security for costs, and then delivered his declaration.

*Aspland* showed against the rule, which was supported by *Maynard*.

The Court (after taking time to consider) said, that the fact of the plaintiff not finding security for costs was no wilful default, as he might be unable to do so, and he had a right to come to this country and obviate the necessity of finding sureties. The rule would therefore be discharged.

<sup>1</sup> See *Esparte* —, 2 Dowl. P.C. 110; *Short v. Pratt*, 1 Bing. 102; *In re Knight and Hill*, ib. 142; *Robertson v. Mills*, 1 Dowl. N.S. 772.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

— Still attended at your service. — *Shakespeare.*

SATURDAY, MARCH 10, 1855.

### PROGRESS OF THE EXECUTOR AND TRUSTEE BILL.

THE Bill for incorporating the shareholders of this Joint-Stock Company, and enabling them to trade in trusts and executorships, was read a second time in the House of Commons on Friday, the 2nd March. Notice had been given that the Bill would be opposed on the ground, not only that it was objectionable in principle, but that if it were proper to be entertained, it should be introduced as a public Bill, inasmuch as it sought to effect several important alterations in the Law, which ought not to pass in the form of a private Bill for the benefit of a single Joint-Stock Company.

It may be said, with all due deference to the Houses of Parliament, that one of them is more disposed than the other to favour a particular class of legislative measures. Thus, alterations in the Law which are of a popular nature, promising advantages that may never be realised, frequently find favour in the Representative Assembly, where the number is far too numerous to meet the requirements of a *deliberative* tribunal.

A decision, therefore, of the House of Commons in favour of a private Bill, like the present, by no means proves that it will operate as a wise and salutary Law; and it is well that the subject will undergo a more searching and deliberative investigation in the Upper House.

It may be observed that, after a full and patient hearing last Session in favour of the measure before the Select Committee of the House of Lords, and a decision against the principle of the Bill, it is not a little surprising that the project should be again brought forward in the very next Session.

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What grievances, it may be asked, have the Public sustained, that demand this extraordinary remedy? Where are the petitions setting forth the evils which this scheme proposes to remedy? Amongst all the Royal Commissions for inquiring into the state of the Law, and all the Reports which have been published, where shall we find the foundation for the alteration now urged forward?

It would seem as if nothing is hereafter to be effected without the aid of a Joint-Stock Company. There must be a Chairman or President, a Deputy Chairman or Vice-President, a Committee of Management, or "Executive Council," to conduct all our affairs, to manage our property, and to provide for the maintenance and education of our families, their marriage, and advancement. Nothing can be done without a numerous Board of Directors, receiving fees for their weekly meetings,—some of them just making a brief appearance to "get their attendance marked,"—knowing nothing of the various details of the Trusts or Executorships which have been taken in hand,—or perhaps availing themselves of information which they may obtain relating to the management of partnerships, mines, or other undertakings in regard to which they have an opposing or rival interest!

A paper has been issued in which the following arguments in favour of the scheme are put forward:

It is alleged,

1st. "*That every one is reluctant to undertake responsible duties for others.*"

This assertion we venture confidently to deny. There are, indeed, some indolent, timid, and selfish persons who gladly escape from the duties of trustees, and the families



for whom they are invited to act are better without them; but there are always a sufficient number of friendly, active, and intelligent persons to undertake the office of trustee. Where there is any amount of property, the family to whom it belongs will always find friends ready to render them service. Many receive the appointment as a compliment, and as we find no difficulty in procuring justices of the peace, churchwardens, overseers, and other unpaid officers, so we may safely rely on the relations and friends of persons of property to take charge of their affairs.

2nd. "*The difficulty of selecting Executors and Trustees*" is urged to show the necessity of the Company.

The reply given to the first supposed want refutes also this second point. There is no such difficulty, and especially since the improvements have been effected in the Court of Chancery for the speedy and cheap decision of any point of difficulty in the execution of the trust.

3rd. "*The frequent loss arising from incapacity, inexperience, and dishonesty, and the importunities of the cestui que Trusts*" is further alleged.

Now, it is mere slander on the general body of Executors and Trustees to reproach them with the few instances of defalcation which occur either from inability or neglect. And we believe it to be true that there are, in proportion, as many incapable and dishonest Joint-Stock Companies as there are individual Trustees and Executors.

Then it is urged, in support of the Company, that by way of security there will be a *Guarantee Fund* of 200,000*l*.

If the Society should be successful, this sum will be miserably inadequate to provide for the risk that may be incurred by making either foolish or fraudulent investments.

Again, it is proposed that there shall be an inspection of the joint-stock accounts by a Government Auditor.

We have had experience enough in the winding-up of Joint-Stock Companies, to know that little dependence can be placed on Inspectorships where there is an intention to commit fraud, which may by various ingenious devices be concealed.

The last advantage contended for is—"a continuous Trusteeship, avoiding the evil and expense of change." On this head, it may be remarked, that in many instances the trust is completed during the lives of the trustees, and the property handed over to the parties interested; and where an ad-

ditional trustee is required the expense is small. But the evil of a change of trustees is not avoided by the present plan, for the Directors of a Joint-Stock Company are frequently changed, and the change may be anything but beneficial. The "Executive Council" of the proposed Company may, at first, be very respectable; but who will ensure the continuance of an equal amount of ability, integrity, and solvency in those who may from time to time be elected, when the present members go out of office in rotation, or die, or retire?

The last *ad captandum* argument in favour of the measure is—"that its opponents are the Incorporated Law Society of Attorneys and Solicitors."

This is "the severest cut of all." The opposition must necessarily be conducted for the sake of the Profession, and against the interest of the Public!

If, however, it be objectionable that the Incorporated Law Society should *oppose* the measure because they are attorneys, let it be asked who are the *supporters* of the Bill? Their names are as follow:—

1. James Burchell, Attorney-at-Law.
2. Montagu Chambers, Barrister-at-Law.
3. John Chevallier Cobbold, Attorney-at-Law.
4. Oliver Hargreave, Barrister-at-Law.
5. James Peard Ley, Barrister-at-Law.
6. George Norton, Barrister-at-Law.
7. Thomas Norton, Barrister-at-Law.
8. Charles Gipps Prowett, Barrister-at-Law.
9. Philip Twells, Barrister-at-Law.
10. Henry Ward, Attorney-at-Law.
11. Josiah Wilkinson, Attorney-at-Law.

Now, we submit, it is as possible that the Incorporated Law Society may conscientiously oppose the project because they deem it uncalled for or mischievous, as that these seven Barristers and four Attorneys as Directors, and four Solicitors for the Bill, may think it beneficial.

If the present prejudice in the House of Commons should prevail, because the Bill is opposed by the Legal Profession, and the Bill should pass in that assembly through its various stages,—it will, of course, be brought under the notice of the Peers who voted against it last Session, and the objections which then overthrew it, will be again considered and will doubtless prevail.

## STAMP DUTIES AND REGULATION OF NEWSPAPERS AND POSTAGE OF PRINTED PAPERS.

It being deemed expedient to repeal the stamp duties on newspapers and the Acts relating to the printing and publishing of newspapers; and to make further regulation of the duties of postage in respect of printed papers transmitted by post: It is proposed to enact as follows:—

1. The stamp duties now payable in the United Kingdom on newspapers, and also the several Acts and parts of Acts specified in the Schedule hereunto annexed relating to the printing and publishing of newspapers, shall be and the same are hereby repealed.

2. Any printed book or printed paper and any packet of printed books or printed papers posted in any town or place within the United Kingdom, on which there shall be affixed on the outside thereof a postage stamp or stamps denoting the rate of postage hereinafter specified in that behalf, or which shall be duly inclosed in a cover stamped, or on which a stamp or stamps shall be affixed on the outside thereof for denoting such rate of postage, shall be transmitted by the post between any places within the United Kingdom free from any further rate or charge of postage.

3. The rate of postage to be paid for every transmission by post of every such printed book or printed paper, if posted singly, or for any packet of such books or papers, and to be denoted by a stamp or stamps affixed thereon, or by such stamped cover as aforesaid, shall be as follows; that is to say,

For any weight of such book, paper, or packet, not exceeding *four* ounces, the rate of *1d.*

If exceeding *four* ounces, then at and after the rate of *1d.* for every *four* ounces of the weight thereof:

And for any fractional part of *four* ounces over the first *four* ounces, or over any multiple of that quantity in weight, the additional rate of *1d.*

4. That any printed work or printed paper not exceeding *six* ounces in weight, printed and published in the United Kingdom on paper stamped with such appropriate die as hereinafter-mentioned for denoting the rate of *1d.*, if not exceeding *four* ounces in weight, or a rate of *1½d.* if exceeding that weight, shall from time to time, when and so often as the same shall be posted within the period of *seven* days from the day of the date of the publication thereof, be transmitted and re-transmitted by the post between any places in the United Kingdom (except by the post of a post town addressed to a person within the limits of such town or its suburbs) free from any further rate or charge of postage, but under and subject nevertheless to the terms and conditions

following; that is to say, such work or paper shall be printed on not more than two sheets or pieces of paper forming one publication; one of which sheets or pieces of paper shall be stamped with an appropriated die denoting the said postage rate; and on the top of every page of such work or paper there shall be printed the title thereof and the date of publication; and such work or paper at the time when the same shall be posted shall be folded in such manner that the whole of the stamp denoting the postage rate shall be exposed to view, and be distinctly visible on the outside thereof; also no such work or paper shall be printed on pasteboard or cardboard, or on two or more pieces or thicknesses of paper pasted together, nor shall any pasteboard or cardboard, or such pasted paper be transmitted by post with any such work or paper, either as a back or cover thereto or otherwise.

5. That during the period of 10 years from the passing of this Act any British newspaper existing before the 1st January, 1855, and which is now existing, and the whole impression of which has hitherto been duly stamped, and which shall be hereafter printed and published on paper stamped, with such appropriated die as aforesaid for denoting the postage rate of *1d.*, and the letter-press of which shall not exceed the dimensions aforesaid, shall be transmitted and re-transmitted by the post notwithstanding that the weight thereof may exceed *four* ounces, but under and subject to the terms and conditions aforesaid in other respects.

6. The rates and duties by this Act directed or authorised to be charged for the transmission by post of printed works, books, and papers shall be denoted by postage stamps to be provided or impressed by or under the direction of the Commissioners of Inland Revenue.

7. The Commissioners of Inland Revenue at the request and expense of the proprietor or printer of any printed work or paper shall cause a proper die or proper dies to be prepared under their directions for stamping the paper whereon such work or paper is intended to be printed, to denote the rate of postage by this Act charged for the transmission and re-transmission of the same by post; and the said Commissioners shall also cause to be prepared a new die for the like purpose from time to time when and as they shall think necessary; and the reasonable costs and expenses of repairing such dies shall be from time to time defrayed by the proprietor or printer of such work or paper, and be paid to such person as the said Commissioners shall appoint, before any paper shall be stamped with any such die; and every such die shall be appropriated to the particular work or paper, by having the title or some part of the title thereof expressed on such die in such convenient manner and form as the said Commissioners shall deem proper.

8. Paper to be stamped with appropriated dies. Discount to be allowed on stamps for Irish newspapers.

9. Commissioners may use dies provided under former Acts for stamping paper under this Act.

10. Newspapers may be registered at the General Post Office to entitle the same to the privileges of transmission abroad under treaties with foreign powers.

11. British newspapers sent by post to be subject to the rates and conditions of this Act.

12. It shall be lawful for the Commissioners of her Majesty's Treasury, by warrant under their hands, to allow any printed book, printed newspaper (British, colonial, or foreign), or other printed publication or papers, to be transmitted by the post between places in the United Kingdom, or between the United Kingdom and her Majesty's colonies or foreign countries, or between any ports or places beyond the sea (whether through the United Kingdom or not), either free of postage or subject to such rates of postage as the Commissioners of the Treasury or the Postmaster-General, with their consent, shall from time to time think fit.

13. Power to Treasury to make regulations for carrying the Act into effect.

14. Newspapers and other printed papers sent by post not in conformity with this Act to be charged letter rates of postage.

15. Powers, provisions, &c., of former Acts to be applied.

16. Penalties recoverable under provisions of Act 1 Vict. c. 36.

The Acts referred to in the Schedule are 60 Geo. 3, c. 9; 1 Wm. 4, c. 73; 6 & 7 Wm. 4, c. 76; 16 & 17 Vict. c. 63, s. 3; 16 & 17 Vict. c. 71.

[This transmission of books and papers, weighing four ounces for 1d., applies only when they are printed. "Papers" not printed must, it appears, be paid for as now, at 2d. per ounce.]

## PARLIAMENTARY REPORTS AND RETURNS.

### INCLOSURE COMMISSION.

By the 10th annual report of the Commissioners pursuant to the provisions of the 8 & 9 Vict. c. 118, it appears that the number of applications of all kinds since the passing of the Act has been 1,447, and that the number of acres comprised in the applications for inclosure and conversion is 440,555.

The aggregate average of the several inclosures confirmed is 144,187.

And of the several inclosures now in course of progress, 278,601.

Since the last annual report, the number of cases received is 262, including 22,332 acres, including 51 for inclosures, 191 for exchange of land, nine for partitions, two for division of intermixed land, three in respect of proceedings under local acts, two for setting out copyhold and other boundaries, three for application of money received under Lands' Clauses'

Consolidation or Railway Acts, and one to apportion fixed rents.

The Commissioners have received the necessary consents to the following inclosures:—Melmerby, *Kirkland*, *Boatle*, *Cumberland*; North Coats, *Lincoln*; Bowerchalke, *Wilts*; Engollan Common, *Cornwall*; Ulleskelf, *Ilkley* Cowpasture, *York*; Thrandeston, *Suffolk*; Milburn Fell, *Westmoreland*; Great Broughton, *Chester*; Dymock, *Gloucester*; Westwick, *Cambridge*; Pendine, *Cardarthen*; Barnes, *Surrey*; Ramsden Bellhouse, *Essex*; West Lulworth and Winfrith Newburgh, *Dorset*; Penlline and Laugan, *Glamorgan*; the Wash Common, *Berks*; Horsepath and Shotover, *Oxford*.

The average expense of the inclosure proceedings, as far as the office is concerned, up to the time of the assents to the provisional orders, including any expense which may have attended these assents, and which leaves the case ready for Parliament to deal with, is 17l. 5s.

## ORDERS IN COUNCIL.—EXTENSION OF COMMON LAW PROCEDURE ACT.

### SALFORD BOROUGH COURT.

It is ordered by her Majesty in Council, that subject to such directions as to the persons by whom the powers and duties incident to the provisions of the Common Law Procedure Act, 1852, as applied to the Court of Record for the hundred of Salford in the county of Lancaster, shall and may be exercised with respect to matters in the said Court; and to such orders and directions for carrying into operation the said provisions in the said Court as in such order is thereafter contained, the provisions of "The Common Law Procedure Act, 1852," with all requisite modifications and alterations, with reference to the constitution and peculiar circumstances of the said Court and the rules made and to be made in pursuance of the said Act, with the like requisite modifications and alterations shall within one month after such order shall have been published in the *London Gazette*, extend and apply to the Court of Record for the hundred of Salford in the county of Lancaster; that is to say, all the provisions of "The Common Law Procedure Act, 1852," except as in the said order are excepted.

### CAMBRIDGE BOROUGH COURT.

It is ordered by her Majesty in Council, that within one month after such order shall have been published in the *London Gazette*, all the provisions of the "Common Law Procedure Act, 1854," and the rules made and to be made in pursuance thereof, shall extend and apply to the Court of Record of the borough of Cambridge called the Court of Pleas.

And her Majesty is further pleased to order that the Court of Queen's Bench, being the Court of Error from the said Court of Record for the said borough of Cambridge, shall also be the Court of Appeal from the said Court for the purposes of the said Act, in reference to motions for new trials, or to enter verdicts or nonsuits.

#### COLCHESTER BOROUGH COURTS.

It is ordered by her Majesty in Council, that within one month after such order shall have been published in the *London Gazette*, all the provisions of the "Common Law Procedure Act, 1854," shall apply to the Courts of Record of the borough of Colchester, called the Law Hundred and Foreign Courts.

From the *London Gazette* of 2nd March.

#### NOTICES OF NEW BOOKS.

*Rouse's Practical Man: giving nearly 400 carefully prepared Forms in Legal Matters requiring prompt attention, and a complete collection of Tables and Rules applicable to the management of Estates and Property, and to the Calculations of all Values dependent on Lives, Reversions, Terminable Payments, &c. Including Tables of the Values of Joint Lives, according to the Government probabilities of Life, distinguishing Male and Female Lives. Seventh Edition, with 120 additional pages.* By ROLLS ROUSE, of the Middle Temple, Esq., Barrister-at-Law, Author of "Copyhold and Court-keeping Practice," &c., &c. London: Maxwell, 32, Bell Yard, Lincoln's Inn. 1855.

THE learned Author of this useful work observes in his Preface:—

"Determined to make this work as useful as I can, I have not, in the preparation of this edition, confined myself to a mere reprint of the last, with such alterations as changes in the law have rendered necessary; but have not only inserted several new titles, but have extensively added to many of the other titles, and have, I trust, materially improved many of the forms and tables before given.

"Under the new title, *Succession Duties*, I have given the official abstract of the Act, and numerous rules for calculating, with the tables in this work, the amount of duty, according to the various rights of succession. Amongst the new titles are *Attestations to Deeds, Forms of Annuity Deeds, Bills of Exchange*, and proceedings under the *Agricultural Buildings, or Landlord and Tenant Act*.

"In the important title of '*Wills*,' very material additions have been made,—the outline wills being increased in number, and rearranged, to give more facility in reference; many new forms have also been added, includ-

ing full powers, applicable to settlements, or to carrying on the testator's business; and a form in relation to copyhold property, to be held on trust, which will not only save, in many cases, a great part of the expense of admission, but greatly facilitate the enfranchisement of the property.

"The title '*County Courts*,' has been entirely redrawn, and very greatly extended, the provisions of the new Acts being given, with the practice much more fully stated, and many additional forms inserted.

"The title '*Stamps*,' has also been entirely redrawn, to include the recent Acts, and to give the stamps and provisions as to stamps, with much greater fulness than in the last edition.

"In '*Arbitrations*,' '*Guarantees*,' and '*Notices*,' material additions have also been made, and in most of the other titles in Part I. additions have been made.

"In PART II., the comparison of French and English measures, weights, and money, has been rendered much more comprehensive. Several new Rules for measurements, with a rule for estimating the weight of bullocks, have been given, and additions made under the head '*Mental Calculations*.'

"In PART III., the remarks introductory to the rules have been enlarged, and, where it has appeared desirable, explanatory observations have been added in the rules and tables.

"In the *Tables*.—Those of French measures, weights, and money, have been greatly extended; a table of the expectation of life, according to the Government values, has been added, and also a table of conveyancing memoranda, which, it is thought, may be found useful in the comparison of abstracts, and preparation of deeds. An improved form of inheritance table has also been given, with a property tax table at 1s. 2d. in the £.

"The parts of the life and other tables, applicable to the calculation of Succession Duties, have also had distinguishing marks attached to them; and various improvements have been made in several of the other tables.

"To show the extent of the additions made in this work, it may be remarked, that the present edition exceeds by 120 pages the length of the Sixth Edition,—and that whilst the First Edition only extended to 162 pages, printed without contraction, the present edition extends to 450 pages, printed with numerous contractions,—the effect of which will be understood when it is stated that a page of this work, as now printed, contains as many words as a full page of '*Bythewood's Conveyancing*.'

"In offering the present edition to the public, it may not be inapt to suggest that the work would be serviceable to—

"*Members of the Bar* on circuit; not merely in the application of the legal forms, but in the numerous instances where an acquaintance with general computations and measurements, and with the mode of solving questions relative to terminable interests and reversions, or dependent on the value of lives and survivor-

ships, will be found of great advantage, in the conduct of cases at *amici prius*.

"To *Solicitors*, every part of this work will be found extensively useful in practice. Part I. gives forms and instructions, not only available, when reference cannot be had to other books, but which, from the great pains bestowed in their preparation, will, it is trusted, be found equally serviceable when other books are at hand. Part II. gives fully and simply the information required in the management of estates and property—a class of business frequently in the hands of solicitors, and which might with equal advantage to the solicitor and the client be greatly extended. Part III. will enable solicitors to estimate the value of all interests which are terminable or reversionary, or dependent on the value of lives, and to advise their clients on the expediency of any proposed transactions in relation to such interest, without subjecting their clients to the expense of consulting others, and in many cases to unpleasant publicity. Part IV. comprises numerous rules for calculating the amount of Succession Duty, and from the different values of succession in which duty is payable, such rules will be most useful in practice.

"In *Life Assurance Offices*, the work will be found to give information, which may enable an actuary to have much work done by clerks, which would otherwise require his personal attention; and the value in such office of the *tables of two joint lives, according to the Government probabilities of life, and giving separately the male and female lives*, need scarcely be enlarged on.

"To *Landed and other Proprietors*, Parts II. and III. will give fully, and yet simply, the rules and tables applicable to the general management of property, and estimating the value of interests which are terminable or reversionary, or depending on the value of lives. The work will also be useful as a book for the library, to be handed to the solicitor who may be required, without previous instruction, to prepare an agreement or will, or other legal document.

"To *Valuers and Estate Agents*, Part II. will give in a much more condensed and clear manner than in any other work, the rules and tables required in general measurements and computations, with many rules and tables not obtainable elsewhere; and Part III. will give full information required in estimating the value of all terminable, reversionary, and life interests; and, as respects the latter, where more than one life is concerned, the new tables give the correct values according to the Government probabilities, never before published, but absolutely essential in order to accurately estimate life interests."

The following is an outline of the contents of the present edition, the titles in italics being new, those with \* being redrawn and greatly enlarged, and those marked † having material additions.

**PART I.—Legal Forms, &c.**—Acknowledg-

ments, affidavits,\* and statutory declarations,† agreements,† *assuavit deeds*, arbitrations,† *attestations*, bail, bankruptcy, bills of exchange, bills of sale,† bonds, cognovits,† conditions of sale,† contracts on sale,† County Court practice, with forms; \* debtor and creditor deeds, distresses and replevins, guarantees,† *Landlord and Tenant Act* (agricultural buildings) and *Forms*, proceedings for return of malt duty, note of hand with surety, notices† (48 in number), partnership memoranda, powers of attorney, releases, riot damages, undertakings, warrants of attorney, warranty of a horse, wills, including suggestions for their preparation; Abstract of Wills' Acts,† 100 forms, and 21 outline wills; and remarks on,\* and full lists of stamps.†

Tables of the distribution of an intestate's personal estate, and of inheritance to real property under the old and new law, are also given.

**PART II.—Measurements and General Computations.**—Rules and Tables for measuring surfaces, contents, and distances generally, including the measurement to and between inaccessible objects; roofs and thatchers' work, contents and weight of stacks, contents and loads per acre of manure; weight of bullocks,\* contents of timber and wood, cisterns, tanks, and casks; weight of cast and wrought iron, sheet lead, bar iron, lead and iron pipes, &c., weight and contents of coppers; artificers' work generally, and particularly as to masons, carpenters and joiners, plasterers, bricklayers, slaters and tilers, and painters, plumbers, and glaziers; comparison of English and French measures, weights, and money;\* also 50 tables, many new, and the others, with but two or three exceptions, remodelled and extended, and the additions comprising several Trigonometrical Tables of great utility.

**PART III.—Property and Life Valuations, &c.**—Introductory remarks and instructions,† estates, part freehold and part copyhold; freehold, copyhold and leasehold for years or lives; annuities on a single life or on any number of joint lives or survivorships; the like deferred, or determinable on life or lives; reversionary annuities, apportionment of interest in annuities, reversions and next presentations, successive lives and presentations, deferred payments, leaseholds for years or lives, rent to pay named per-centage, beneficial values of leases, additional rent equal to premium; renewing or adding life in copyholds, church, collegiate, and other renewable leaseholds; copyhold enfranchisements, accumulations of sum or yearly sums, value of life policies or surrendering bonus on a life policy, yearly, half-yearly, and quarterly payments; interest, income, and salaries, property tax,† rate of interest on investments in different stocks; also on purchase or sale of leaseholds and annuities for years certain; interest on leaseholds equal to perpetuity of 4 per cent., &c., &c.

**PART IV.**—Numerous rules for calculating Succession Duty.

At the end of the work are 30 tables, re-

lating to Parts III. and IV., several remodelled and extended, and including amongst them the very important tables of the values of two joint-lives, according to the Government probabilities of life, and distinguishing male and female lives.

Upon this subject the Author makes the following comments :—

"In the Fifth Edition, Deparcieux's Tables of Joint Lives were given, as those approaching more closely to the correct values, than any other published Tables, and consequently the best which could be then given; but the difference between the value of male and female lives being very considerable, and Deparcieux's Tables combining the lives, it has long been desirable that tables, giving separately the value of male and female lives should be published.

"From the great increase in the number of calculations, by thus separating the values, it being fourfold where the ages differ, and threefold where equal; and life calculations being necessarily complex and laborious, and requiring great care in revision: no such Tables have hitherto been published, except that for single lives at 4 per cent., given in Mr. Finlaison's Reports, and the Table for two male lives, given at the end of the Succession Duties Act:

"The value of such Tables has induced me to prepare and now give the Tables required, and it is confidently hoped that their utility may equal the pains taken in their preparation.

"Some difficulty has been experienced in compressing the information given within so small volume as the present; but by adopting contractions, and by economising space to the utmost, the object has been attained."

## MEDICAL JURISPRUDENCE.

### CIRCUMSTANTIAL EVIDENCE.

DR. TAYLOR'S excellent work on Medical Jurisprudence,<sup>1</sup> which we have frequently had occasion to notice, has just arrived at a fifth edition, completing 10,750 copies. The following is a summary of the more important additions to the volume, now extending to nearly 1,000 pages :—

"Under *Poisoning*, numerous cases have been added, including new facts regarding the fatal doses of some of these agents, and the pathological changes which they produce. The subject of chronic poisoning has been more fully treated, and various improvements in the mode of applying tests for the detection of poisons have been introduced. In the chapters on Prussic Acid, Morphia, Strychnia, and Aconite, the reader will find some new cases which add to our knowledge of, and amend our experience on the operation of these poisons.

"Under *Wounds*, the following subjects have received additional illustration :—Ecchymosis,—the production of wounds by falls, and the method of distinguishing accident from homicide,—the influence of articles of clothing in modifying the appearance of personal injuries,—the direction of wounds as furnishing evidence of their origin,—the microscopical and chemical examination of clothes and weapons, especially in reference to the detection of blood, and the means which at present exist for distinguishing human from animal blood,—the concealed causes of tetanus,—cicatrices from disease or wounds,—survivorship under severe wounds of the heart and injuries of the head,—ruptures of the liver, lungs, and bladder,—wounds from fire-arms as furnishing evidence of homicide,—the burning of the human body after death, and remarks on its alleged spontaneous combustion.

"Under *Infanticide* new cases will be found, which illustrate the causes of death in newborn children,—remarks on the medical evidence of the survivorship of the child, and the distinction between accidental and homicidal violence.

"The chapters on *Pregnancy* and *Abortion* have also received additions; and under *Legitimacy*, the medical evidence respecting gestation has undergone a full revision, by the aid of recently published facts and observations. It is unnecessary to specify the numerous additions which have been made to the remaining portions of the work. The chapters on *Drowning*, *Hanging*, *Strangulation*, and *Suffocation*, contain many additional facts, which may probably have an important bearing on medical evidence in future cases. Under *Insanity*, the provisions of the recent Acts of Parliament regarding medical certificates for the confinement of the insane, are fully described; and some further observations have been made in reference to the plea of insanity in criminal cases. Notices of many important trials (involving medico-legal questions), which have occurred in the United Kingdom from the date of the publication of the previous edition to the Lent Assizes of the present year, have been inserted in those parts of the volume to which the cases specially refer. In short, it has been the desire of the Author throughout the whole of the work, to keep it up to the level of the day in regard to medico-legal information.

"In the preparation of this edition, the Author has had the valuable assistance of the Right Honourable the Lord Justice Clerk of Scotland. His Lordship has revised the whole of the sheets, and has not only furnished the Author with many useful suggestions for the improvement of the work, but has enabled him to correct some errors which had crept into the reports of cases published in the earlier editions."

To the legal student it will be interesting to notice some of the statements of Dr. Taylor in illustration of cases of circumstantial evidence.

<sup>1</sup> Published by Churchill, New Burlington Street.

In pursuing the examination of the question respecting the homicidal or suicidal origin of wounds, the attention of the reader may be called to the force of evidence which is sometimes derived from the circumstances under which the body of a person, dead from wounds, is discovered. It may be said that this is a subject wholly foreign to the duties of a medical jurist; but we cannot agree to this statement: there are very few in the profession, who, when summoned to aid justice, by their science, in the detection of crime, do not seek for circumstances by which to support the medical evidence required of them.

"A practitioner would certainly be wrong to base his professional opinion exclusively on circumstantial proofs: but it is scarcely possible for him to avoid drawing an inference from these, as they fall under his observation, for or against the prisoner. His evidence may be of itself weak, and insufficient to support the charge against an accused party; in such a case, if any suspicious circumstances have come to his knowledge, he may be often unconsciously induced to attach greater importance to the medical facts than he is justified in doing; in short, he may, through a feeling of prejudice, which it is not always easy to avoid, give an undue force to the medical evidence. But if a proper degree of caution be used in drawing inferences from the circumstantial proofs, and they are not allowed to create a prejudice in his mind against a prisoner, a practitioner is, I think, bound to observe and record them; for being commonly the first person called to the deceased, many facts, capable of throwing an important light on the case would remain unnoticed or unknown, but for his attention to them. The position of a dead body,—the distance at which a knife or pistol is found,—the direction of the instrument,—whether situated to the right or left of the deceased,—the marks of blood about the person, clothes, or furniture of the apartment, are all circumstances which must assist materially in developing the real nature of a case, and in giving force to a medical opinion. Many of these circumstances can fall under the notice of him only who is first called to the deceased; and, indeed, if observed by another, no advantage could be taken of them without the assistance of a medical man.

"Among the questions which present themselves on these occasions are the following:—Is the position of a wounded body *that* which a suicide could have assumed? Is the distance of the fatal weapon from the body such as to render it improbable that it could have been placed there by the deceased?—In answering either of these questions, it is necessary to take into consideration the extent of the wound, and the period at which it probably proved fatal. Again, it may be inquired: Has the deceased bled in more places than one? Are the streams

of blood all connected? Are there any marks of blood on his person or clothes, which he could not well have produced himself?—These are questions, the answers, to which may materially affect the case of an accused party: and the practitioner, in noticing and recording the circumstances involved in them, ought therefore to exercise due caution and deliberation."

There are many cases on record in which an observance of slight and unexpected circumstances by medical men, has led to the detection of offenders.

"In the life of Sir Astley Cooper, it is mentioned, that when called to see *Mr. Bright*, of Deptford, who had been mortally wounded by a pistol-shot in the year 1806, he inferred from an examination of the localities, that the shot must have been fired by a *left-handed man*. The only left-handed man near the premises at the time was a *Mr. Patch*, a particular friend of the deceased's, who was not in the least suspected. This man was afterwards tried and convicted of the crime:—and he made a full confession of his guilt before execution."

We must remember that it is quite compatible with suicide that a weapon may be found at some distance, or in a concealed situation; but it is much more frequently either grasped in the hand, or lying by the side of the deceased.

"In one instance, it is stated the deceased was discovered in bed with his throat cut, and the razor lying *closed* or shut by his side. It appears very improbable that any person committing suicide, after dividing one or both carotids and the jugular veins, should have power to close or shut the razor; and there are fair grounds to suspect interference when a razor is thus found closed. There is, however, one circumstance in relation to a weapon strongly confirmatory of *suicide*. If the instrument be found firmly grasped in the hand of the deceased; no better circumstantial evidence of suicide can, perhaps, be offered. It is so common to find knives, razors, and pistols grasped in the hands of suicides, that it is quite unnecessary to produce cases illustrative of this statement. The grasping of a weapon appears to be owing to muscular spasm persisting after death and manifesting itself under the form of what has been called *cardaverous spasm*—a condition quite distinct from rigidity, although often running into it. It does not seem possible that any murderer could imitate this state, since the relaxed hand of a dead person cannot be made to grasp or retain a weapon, like the hand which has firmly held it by powerful muscular contraction at the last moment of life. In this respect the case of *Reg. v. Saville*, Nottingham Summer Assizes, 1844, is of great interest to the medical jurist. A woman was found dead with her throat cut, and there was a razor loose in her hand. There was no blood upon the hand which held the

razor, and this, together with the fact of its being quite loose, rendered it certain that it must have been placed there by the prisoner after having cut his wife's throat. The deceased may be found with some other article grasped in the hand. (See case, *Ann d'Hyg.* 1829, i. 464.) It may be her own or the prisoner's hair torn off in the struggle for life; and on this point a question of identity may be easily raised. (*Reg. v. Ellison*, Bodmin Summer Assizes, 1845.) In a case which occurred to Dr. Mare, a woman was found assassinated in her house, and when the body was discovered, a small snuff-box was still held firmly in one hand. This proved that the murder must have taken place very suddenly and without any resistance on the part of the deceased. (*Ann d'Hyg.* 1829, i. 465.)

"If the weapon cannot be discovered, or if it be found concealed in a distant place, this is strongly presumptive of homicide, provided the wound be of such a nature as to prove speedily fatal. In the case of *Lord William Russell* no weapon could be discovered; and although the wound in the throat bore some of the characters of a suicidal incision, this fact alone was sufficient to show that it must have been the act of a murderer. With respect to the weapon being found at a distance from the body, other circumstances should be taken into consideration before any opinion is expressed. We may observe whether the weapon, if it be a sharp cutting instrument like a razor, has been recently notched; for this might show that a degree of force or violence has been used, not easily reconcilable with the suicidal use of the instrument. The well-known case of the *Earl of Essex*, who was found dead in the Tower, in July, 1683, gave rise to a doubt on this point. The deceased was discovered with his throat cut, and a razor lying near him. This razor was found to be much notched on the edge, while the throat was smoothly and evenly cut from one side to the other, and to the vertebral column. Some considered this to have been an act of suicide, others of murder. Those medical witnesses who supported the view of suicide, were asked to explain how it was that such an even wound could have been produced by a notched razor. They attempted to account for this by asserting that the deceased had probably drawn the razor backwards and forwards across the neck-bone; forgetting that before this could have been done by the deceased, all the great vessels of the neck must have been divided!"

## POINTS IN COMMON LAW PRACTICE.

### DISCHARGE OF FEME COVERT WHEN TAKEN IN EXECUTION WITH HUSBAND.

A MARRIED woman was taken under a *ca. ss.* in an action against her and her husband, but it appeared that she had no separate estate or effects whatever in her own right or other-

wise, or over which she had any control or disposing power, nor held in trust for her. *Patteson, J.*, having thereupon made an order for her discharge, this motion was made to rescind the order.

*Lord Campbell, C.J.*, said, "I think that my brother *Patteson* had a discretion vested in him in the present case, and that he well exercised it. No doubt a plaintiff has the power of taking both wife and husband; but the question is, whether the Court has any and what authority to interfere. It is admitted to have been the established practice for many years, that where husband and wife are both taken in execution, and she has no separate property, the Court will discharge her. This is laid down by *Mr. Tidd*, whose authority alone I should rely upon in such a case. I have always regarded that learned person with the greatest veneration; I may say that I look with piety to his memory, and owe in a great degree to him the success I have had in life. If, indeed, the practice stated by him, though admitted to prevail, were contrary to law, it ought not to be sanctioned; but it is not shown to be against law; and what reason is there it should be so? If a married woman has no separate property, what purpose can be answered by detaining her, except those of oppression and of working unduly upon the husband's feelings? *Larkin v. Marshall*, 4 Exch. R. 804, is an authority to be respected: but the Court of Exchequer there admits the discretionary power, and recognises the precedents, only expressing a desire not to extend them. *Parke, B.*, says: 'Where the husband and wife are both taken in execution, the discharge of the wife may possibly be supported, on the ground that the creditor has got all he is properly entitled to; but whether that reasoning be satisfactory or not, inasmuch as the decision has been come to, we should probably feel ourselves bound in similar cases; but that class of decisions has no application where the wife alone is taken in execution.' Upon what principle is the discharge supported where both are taken together, but that the detention is oppressive and of no use? And what difference can it make in this respect, whether the wife is arrested with her husband, or is arrested separately when the husband might be taken? In neither case can any purpose be answered but that of oppression." The rule was discharged with costs. *Edwards v. Martyn*, 17 Q. B. 693.



## SHERIFFS, UNDER-SHERIFFS, DEPUTIES,

*Note.*—WARRANTS are not granted in Town for those Places marked (\*)—The Term

Office Hours, in Term, from 11 till 4;

## ENGLAND.

| <i>Counties, &amp;c.</i>  | <i>Sheriffs.</i>  |
|---------------------------|---|
| Bedfordshire .. ..        | John Shaw Leigh, of Luton Hoo, Bedfordshire, Esq. .. ..                           |
| Berkshire .. ..           | Henry Elwes, of Marcham Park, Abingdon, Esq. .. ..                                |
| Berwick-upon-Tweed ..     | Thomas Bogue, of Marygate, Berwick-on-Tweed, Esq. .. ..                           |
| *Bristol, City of .. ..   | Robert Phippen, of Church House, Bedminster, Bristol, Esq. .. ..                  |
| Buckinghamshire .. ..     | P. D. P. Duncombe, of Brickhill Manor, Fenny Stratford, Esq. .. ..                |
| Cambridge and Hunts. ..   | Sir Williamson Booth, of Woodbury Hall, Gamlingay, Cambridge-shire, Bart. .. ..   |
| *Canterbury, City of ..   | John George Drury, of Canterbury, Esq. .. ..                                      |
| Cheshire .. ..            | John Chapman, of Hill End Mottram in Longendale, Chester, Esq. .. ..              |
| *Chester, City of .. ..   | John Hicklin, of Chester, Esq. .. ..  |
| *Cinque Ports .. ..       | The Most Noble James Andrew, Marquis of Dalhousie .. ..                           |
| *Cornwall .. ..           | William Henry Pole Carew, of East Antony, Cornwall, Esq. .. ..                    |
| Cumberland .. ..          | Thomas Story Spedding, of Mirehouse, Esq. .. ..                                   |
| *Derbyshire .. ..         | Peter Arkwright, of Willealey Castle, Esq. .. ..                                  |
| Devonshire .. ..          | Thomas Daniel, of Stoodleigh, Esq. .. ..  |
| Dorsetshire .. ..         | Robert Williams, of Bridehead, Dorset, Esq. .. ..                                 |
| *Durham .. ..             | R. Surtees, of Redworth House, Darlington, near Durham, .. ..                     |
| Essex .. ..               | John Watlington Perry Watlington, of Moor Hall, Harlow, Essex, Esq. .. ..         |
| *Exeter, City of .. ..    | Thomas George Norris, of Southernhay, Exeter, Esq. .. ..                          |
| *Gloucestershire .. ..    | Corbett Holland Corbett, of Hadmington Hall, near Stratford-upon-Avon, Esq. .. .. |
| *Gloucester, City of ..   | George Samuel Wintle, of the City of Gloucester, Esq. .. ..                       |
| Hampshire .. ..           | The Hon. Sir Edward Butler Knight, of Harefield House .. ..                       |
| Herefordshire .. ..       | Francis Richard Wegg-Prosser, of Belmont, near Hereford, Esq. .. ..               |
| Hertfordshire .. ..       | Nathaniel Hibbert, of Munden in Watford, Esq. .. ..                               |
| Huntingdon and Cambridge  | Sir Williamson Booth, Woodbury Hall, Gamlingay, Bart. .. ..                       |
| Kent .. ..                | Sir Walter Charles James, of Bethshanger, near Sandwich, Bart. .. ..              |
| *Kingston-upon-Hull.. ..  | Joseph Gee, of Cottingham, near Hull, Esq. .. ..                                  |
| *Lancashire .. ..         | John Pemberton Heywood, of Norris Green, near Liverpool, Esq. .. ..               |
| *Leicestershire .. ..     | William Ward Tailby, of Carlton Curliou, Leicestershire, Esq. .. ..               |
| *Lichfield, City of .. .. | John Coxen, of Freeford Farm, Esq. .. ..  |
| Lincolnshire .. ..        | George Skipworth, of Moortown House, Esq. .. ..                                   |
| Lincoln, City of .. ..    | Charles Doughty, of Lincoln, Esq. .. ..   |
| London, City of .. ..     | { Henry Mugeridge, of St. Andrew's Hill, Esq. .. ..                               |
| Middlesex .. ..           | { Charles Decimus Croaley, of Sun Court, Cornhill, Esq. .. ..                     |
| *Monmouthshire .. ..      | John Russell, of Wyelands, near Chepstow, Esq. .. ..                              |
| *Newcastle-upon-Tyne ..   | Edward Nathaniel Grace, of Newcastle-upon-Tyne, Esq. .. ..                        |
| Norfolk .. ..             | Brampton Gurdon, of Letton, Norfolk, Esq. .. ..                                   |
| Northamptonshire .. ..    | Frederick Urban Sartoris, of Rusden Hall, Northamptonshire, Esq. .. ..            |
| Northumberland .. ..      | Rowland Errington, of Sandhoe, Esq. .. ..   |
| *Norwich, City of .. ..   | Robert John Harvey Harvey, of Bracondale, Norwich, Esq. .. ..                     |
| Nottinghamshire .. ..     | Henry Bridgeman Simpson, of Babworth, Nottingham, Esq. .. ..                      |
| Nottingham, Town of ..    | William Vickers Copeland, of Nottingham, Esq. .. ..                               |
| Oxfordshire .. ..         | Benjamin John Whippy, of Lee Place, Oxfordshire, Esq. .. ..                       |
| *Poole, Town of .. ..     | William Bound, jun., of Poole, Esq. .. ..   |
| Rutlandshire .. ..        | Arthur Heathcote, of Pilton, Esq. .. ..   |
| Shropshire .. ..          | Willoughby Hurt Sitwell, of Bucknell, Salop, Esq. .. ..                           |
| Somersetshire .. ..       | George Barons Northcote of Somerset Court, Esq. .. ..                             |
| *Southampton, Town of     | James Caldecott Sharp, of 6, Cumberland Place, Southampton, Esq. .. ..            |
| Staffordshire .. ..       | Samuel Pole Shawe, of Maple Hayes, Lichfield, Esq. .. ..                          |

AND AGENTS, FOR 1855.—[From *Laidman's List.*]

of Office of the Sheriffs, &c., for Cities and Towns, expires on the 9th of November.  
and in Vacation, from 11 till 3.

ENGLAND.

*Under-Sheriffs.*

*Deputies and Town Agents.*

|  |   |
|--|---|
| Charles Addington Austin, Luton, Bedfordshire (A. U.), G. T. Taylor, 18, Featherstone-bldgs. | Gustavus Thomas Taylor, Esq., 18, Featherstone-buildings.         |
| Thomas Hedges Grayham, of Abingdon (A. U.), John Jackson Blandy, Reading .. ..               | Gregory, Gregory, Skirrow, and Rowcliffe, 1, Bedford-row.         |
| James Call Weddell, Berwick-on-Tweed (A. U.), R. Wilson, 3, King's Road, Bedford-row ..      | Pringle, Shum, Wilson, and Crossman, 3, King's-road, Bedford-row. |
| Will am Odý Hare, Small-street, Bristol ..   | Bridges, Mason, and Bridges, 23, Red-lion-square.                 |
| William Powell, Newport Pagnell .. ..  | S. Beisley, 1, Lincoln'-inn-fields.                               |
| George De Vins Wadé, Baldock, Hertfordshire (A. U.) G. F. Maule, Huntingdon .. ..            | G. L. P. Eyre, 1, John-street, Bedford-row.                       |
| Robert Sankey, Canterbury .. ..  | Richardson and Talbot, 47, Bedford-row.                           |
| Thomas Jopson, Stockport (A. U.), John Hostage, Chester .. ..                                | Chester, Toulmin, and Chester, 11, Staple-inn.                    |
| John Hostage, Chester .. ..  | Chester, Toulmin, and Chester, 11, Staple-inn.                    |
| Thomas Pain, Dover .. ..   | Kingsford and Dorman, 23, Essex-street, Strand.                   |
| Henry T. Smith, Devonport .. ..  | William Harris, 5 Stone-buildings, Lincoln's-inn.                 |
| Edward Bowe Steel, Cockermouth .. ..   | Bischoff, Coxe, and Bompas, 19, Coleman-street.                   |
| John James Simpson, Derby .. ..  | Taylor and Collison, 28, Great James-st., Bedford-row.            |
| Thomas Edward Drake, Exeter .. ..  | Buckley and Philbrick, 39, Basinghall-street.                     |
| Charles Burt Henning, Dorchester .. ..   | Sydney Beisley, of 1, Lincoln's-inn-fields.                       |
| William Emerson Wooler, Durham .. ..   | Whitlock and De Gex, 14, Suffolk-street, Pall-mall.               |
| Joseph Jessopp, Waltham Abbey, Essex (A. U.), Gepp and Voley, Chelmsford .. ..               | Hawkins, Bloxam, and Hawkins, New Boswell-ct.                     |
| Edwin Force, Deanery-place, Exeter .. ..   | Wm. Harris, 5, Stone-buildings, Lincoln's-inn.                    |
| John Burrup, Gloucester (firm, Burrup and Son) ..  | Geo. Pleydell Wilton, Raymond's-bldgs., Gray's-inn.               |
| William Matthew, Gloucester .. ..  | William Compton Smith, 31, Lincoln's-inn-fields.                  |
| Robert Harfield, Southampton .. ..   | Messrs. Braikenridge, 10, Bartlett's-buildings.                   |
| Richard Underwood, Hereford .. ..  | Charles Appleyard, 1, New-square, Lincoln's-inn.                  |
| Longmore, Swarder, and Longmore, Hertford ..   | Hawkins, Bloxam, and Hawkins, New Boswell-ct.                     |
| G. de V. Wade, Baldock, Herts, and G. F. Maule, Huntingdon (jointly and severally) ..        | Trinder and Eyre, 1, John-street, Bedford-row.                    |
| William Woodgate, 32, Lincoln's Inn Fields ..  | Palmer, Palmer, and Bull, 24, Bedford-row.                        |
| John Earnshaw, Hull .. ..  | Z. Brooke, 3, New Boswell-court.                                  |
| William Wood, Liverpool (A. U.), Wilson, Son, and Deacon, Preston .. ..                      | Ridsdale and Craddock, 5, Gray's-inn-square.                      |
| Samuel Berridge, Leicester .. ..   | George James Robinson, 35, Lincoln's-inn-fields.                  |
| John Philip Dyott, Lichfield .. ..   | Baxter and Co., 48, Lincoln's-inn-fields.                         |
| George Marris, Caistor (A. U.), Henry Williams Lincoln .. ..                                 | Coverdale, Lee, and Purvis, 4, Bedford-row.                       |
| Richard Mason, Lincoln .. ..   | Taylor and Collison, 28, Gt. James-st., Bedford-row.              |
| Frederick Farrar, Godliman-st., Doctors Commons  | Secondaries' Office, Basinghall-street,                           |
| Alexander Crosley, 34, Lombard-street .. ..  | Burchell and Hall, Red Lion-square.                               |
| H. J. Davis, Newport, Monmouth .. ..   | Few and Co., 2, Henrietta-street, Covent-garden.                  |
| Robert Yeoman Green, Newcastle-upon-Tyne ..  | James Crowley, 17, Serjeant's-inn, Fleet-street.                  |
| George Cooper, East Dereham, Norfolk (A. U.), Messrs. Taylor, Norwich .. ..                  | John Wickham Flower, 17, Gracechurch-street.                      |
| Henry Philip Markham, Northampton .. ..  | Frederick Ouvry, 13, Tokenhouse-yard.                             |
| John Stokes, Hexham .. ..  | Thomas Leadbitter, 7, Staple-inn.                                 |
| George Edward Simpson, Tombland, Norwich ..  | Gustavus Thomas Taylor, 18, Featherstone-bldgs.                   |
| Edmund Percy, Nottingham (A. U.), John Brewster, Nottingham .. ..                            | Taylor and Collison, 28, Gt. James-st., Bedford-row.              |
| Christopher Swann, Nottingham .. ..  | Holme, Loftus, and Young, 10, New-inn, Strand.                    |
| John Marriott Davenport, Oxford .. ..  | Davies, Son, & Campbell, 17, Warwick-st., Regent-st.              |
| Henry Mooring Aldridge, Poole .. ..  | William Skilbeck, 19, Southampton-buildings.                      |
| Thomas Brown, Uppingham .. ..  | Thomas Bennett, 23, Hunter-street, Brunswick-sq.                  |
| Richard Green, Knighton, Radnorshire (A. U.), Joshua John Feele, Shrewsbury .. ..            | Harvey Bowen Jones, 22, Austin-friars.                            |
| John Nicholett, South Petherton .. ..  | W. W. and E. Dyne, 61, Lincoln's-inn-fields.                      |
| James Smith, jun., Southampton .. ..   | Trinder and Eyre, 1, John-st., Bedford-row.                       |
| Robert William Hand, Stafford .. ..  | White and Son, 11, Bedford-row.                                   |

## ENGLAND.

| Counties, &c.             | Sheriffs.   |
|---------------------------|---|
| *Suffolk .. ..            | John Josselyn, of Bury, St. Edmunds, Suffolk, Esq. .. ..              |
| Surrey .. ..              | James Gadesden, of Ewell Castle, Ewell, Esq. .. ..                    |
| Sussex .. ..              | George Carew Gibson, of Sandgate Lodge, Staying, Esq. .. ..           |
| Warwickshire .. ..        | Chandos Wren Hoskyns, of Wroxhall Abbey, Esq... ..                    |
| Westmoreland .. ..        | John Hill, of Castle Bank, Appleby, Esq. .. ..                        |
| Wiltshire .. ..           | Simon Watson Taylor, of Urchfont, near Devizes, Wiltshire, Esq. .. .. |
| *Worcestershire .. ..     | William Dowdeswell, of Pull Court, near Tewkesbury, Esq. .. ..        |
| *Worcester, City of .. .. | William Price, of Spring Hill, Worcester, Esq. .. ..                  |
| Yorkshire .. ..           | James Brown, of Copgrove Knaresborough, Esq. .. ..                    |
| *York, City of .. ..      | George Peacock Bainbridge, of York, Esq. .. ..                        |

## NORTH WALES.

|                        |   |
|------------------------|---|
| *Anglesey .. ..        | Hugh Robert Hughes, of Bodrwyn, Esq. .. ..                        |
| Cardiganshire .. ..    | S. Dukinfield Darbishire, of Penrhyfryn, Esq. .. ..               |
| *Denbighshire .. ..    | Henry Robertson Sandbach, of Havodunos, near Abergelo, Esq. .. .. |
| *Flintshire .. ..      | Arthur Trevor Viscount Dungannon, of Brynkinalt .. ..             |
| *Merionethshire .. ..  | C. J. Tottenham, of Berwyn House, near Llangollen, Esq. .. ..     |
| *Montgomeryshire .. .. | Edmund Ethelstone Peel, of Llandrinio, Esq. .. ..                 |

## SOUTH WALES.

|                               |  |
|-------------------------------|--|
| Breconshire .. ..             | John Williams Vaughan, of Velinnewydd House, Esq. .. ..        |
| Cardiganshire .. ..           | J. Batterby Harford, of Peterwell, Esq. .. ..                  |
| *Carmarthen, Borough of .. .. | Henry Jones, of Llammas Street, Carmarthen, Esq. .. ..         |
| *Carmarthenshire .. ..        | Edward Ab Adam, of Middleton Hall, Carmarthenshire, Esq. .. .. |
| *Glamorganshire .. ..         | Wyndham William Lewis, of the Heath, near Cardiff, Esq. .. ..  |
| *Haverfordwest, Town of .. .. | Richard Phillips, of Old Bridge, Haverfordwest, Esq. .. ..     |
| *Pembrokeshire .. ..          | John Leach, of Ivy Tower, Esq. .. ..                           |
| *Radnorshire .. ..            | John Abraham Whittaker, of New Castle Court, Esq. .. ..        |

## INNS OF COURT AND CHANCERY.

## ORIGIN AND CONSTITUTION.

It has been questioned whether the Attorneys and Solicitors can establish their claim to the "rents, issues, and profits," of some of the Inns of Chancery, the members of which have ceased to hold their usual meetings, or "go into Commons," and have neglected to fill up vacancies in the office of principal and ancients of such societies. We conceive that the validity of the trust, on which the property of those Societies was held, cannot be prejudiced by any omission or neglect of the existing members. The following extracts from Mr. M'Queen's Lecture on the Inns of Court and Chancery throw considerable light on the subject, and tend materially to support the claim of the Attorneys:—

"The only persons spoken of as constituting the legal Profession in the reign of Edward 1st,

are the justices to whom the commission was addressed, and the attorneys and students who were the subject of it. *No Bar is mentioned.* Nor need this be wondered at; for although there were serjeants in those days, the serjeants were but a handful of monopolists, confining themselves exclusively to one lucrative tribunal. A Bar existing as a separate body, is the result of comparative civilisation. In the time of Edward 1st, the duty of the barrister, or advocate was performed by the attorney, who united functions subsequently severed, but which, peradventure, may again in the present age be consolidated.

"In the reign of Edward 1st, and long before, the Masters and subordinate functionaries of the Court of Chancery resided and had their offices in certain hostelrys called *Inns of Chancery*, lying between Fleet Street and Holborn; and in these were placed the attorneys and apprentices chosen by the justices.

"Towards the close of the reign of Edward 1st, or in the very beginning of that of Edward 2nd, Henry de Lacy, the great Earl of Lincoln, a man, who in addition to other splendid quali-

## ENGLAND: .

## Under-Sheriffs.

## Deputies and Town Agents.

|   |  |  |
|---|--|--|
| George Josselyn, Ipswich (A. U.)              | Jackson, Sparke, and Holmes Bury St. Edmunds .. .. | Sharpe, Field, and Jackson, Bedford-row.                       |
| William Haydon Smallpiece, Guildford .. ..    | .. ..  | Abbott, Jenkins, and Abbott, 8, New-inn, Strand.               |
| William Haydon Smallpiece, Guildford .. ..    | .. ..  | Palmer, Palmer, and Bull, 24, Bedford-row.                     |
| Thomas Heath, Warwick .. ..                   | .. ..  | Taylor and Collison, 28, Great James-st., Bedford-row.         |
| John Heelis, Appleby .. ..                    | .. ..  | Gray, Armstrong, and Mounsey, 9, Staple's-inn.                 |
| John Edward Hayward, Devizes .. ..            | .. ..  | William Lewis, 6, Raymond-buildings, Gray's-inn.               |
| Thomas Willis Walker, Upton-on-Severn (A. U.) | Hyde and Tynbys Worcester .. ..                    | Hall and Hunt, 11, New Boswell-court.                          |
| Edward Corles, Worcester .. ..                | .. ..  | T. G. Norcutt, 11, Gray's-inn-square.                          |
| William Gray, York .. ..                      | .. ..  | Westmacott, Blake, and Blake, 7, Great James-st., Bedford-row. |
| Thomas Shepherd Noble, York .. ..             | .. ..  | Clarke and Jackson, 29, Bedford-row.                           |

## NORTH WALES.

|   |                                    |  |
|---|------------------------------------|--|
| Thomas Owen, Llangefni .. ..              | .. ..                              | Abbott, Jenkins, and Abbott, 8, New Inn.                   |
| W. Hughes Conway (A. U.)                  | T. Gold Edwards, Denbigh .. ..     | Edmund Byrne, 28, Southampton-bldgs., Chancery-lane.       |
| J. B. Lloyd, Liverpool (A. U.)            | Thomas Gold Edwards, Denbigh .. .. | Trinder and Eyre, 1, John-st., Bedford-row.                |
| Arthur Troughton Roberts, Mold .. ..      | .. ..                              | Simpson, Cobb, Roberts, and Simpson, 62, Moor-gate-street. |
| Griŷŷab Williams, Bala .. ..              | .. ..                              | C. Wilkin, 10, Tokenhouse-yard.                            |
| Robert Devereux Harrison, Welchpool .. .. | .. ..                              | Gregory, Gregory, Skirrow, and Rowcliffe, 1, Bedford-row.  |

## SOUTH WALES.

|   |       |  |
|---|-------|--|
| Henry Maybery, Brecon .. ..                 | .. .. | Gregory and Sons, 10, Clement's-inn.                       |
| Richard Davis Jenkins, Cardigan .. ..       | .. .. | Trinder and Eyre, 1, John-street, Bedford-row.             |
| William Thomas Thomas, Carmarthen .. ..     | .. .. | Chilton, Burton and Johnson, 7, Chancery-lane.             |
| Thomas Parry, Carmarthen .. ..              | .. .. | Edward Towsey, Quality-court.                              |
| Richard Wyddham Williams, Cardiff .. ..     | .. .. | Keightley, Cusliffe, and Beaumont, Chancery-lane.          |
| William Davies, Haverfordwest .. ..         | .. .. | Hastings and Smith, 3, Southampton-st., Bloomsbury-square. |
| Jonathan Rogers Powell, Haverfordwest .. .. | .. .. | G. P. L. Eyre, Esq., 1, John-street Bedford-row.           |
| William Stephens, Presteign .. ..           | .. .. | White and Sons, 11, Bedford-row.                           |

ties was celebrated for munificence, surrendered his town mansion, with its accompanying advantages in Chancery Lane, to a body of *Common Law professors and their disciples*. This fraternity took their name from the title of their founder, and were known and have ever since been distinguished as the Honourable Society of Lincoln's Inn—the first and the oldest Inn of Court.

"In the reign of Edward 3rd, we are told that the legal *apprentices* of *Thomas' Inn*, one of the ancient Inns of Chancery, finding the accommodation of that place too narrow for their augmented numbers, accepted from the Hospital Knights a lease of the Temple; and here we have the origin—not quite so remote as commonly imagined—of those two great Inns of Court, the Inner Temple and the Middle Temple.

"The fraternities, thus furnished with more capacious habitations, did not relinquish their former dwellings, the Inns of Chancery, but assigned them as places of residence and education for the younger *apprentices*; reserving their new domiciles, the Inns of Court, as head

quarters for the accommodation of the governors, the senior fellows, and higher orders of students.

"Fortescue tells us, that the Inns consisted of two sorts of collegiate houses; one called Inns of Chancery, in which the younger students of the law were usually placed, 'learning and studying,' says he, 'the originals, and as it were, the elements and principles of the law; who profiting therein as they grew to ripeness, so were they then admitted to the greater Inns of the same study called Inns of Court.

"Whether the *attorneys* ever properly belonged to the Inns of Court, it seems difficult to determine. As matter of *right*, it would rather appear that they did *not*; for I find some entries stating that they were admitted *ex gratia*. There are several orders for their exclusion. One in particular, in the reign of Philip and Mary, expresses the concurrent resolution of all the four Houses of Court, that no attorney should be received in the Superior Inns; the order laying it down as an universal regulation,—“That if any member of an Inn

of Court should practise 'attorneyship,' he should *ipso facto* be dismissed the Society; with liberty, however, to repair to the *Inn of Chancery from whence he had come.*" This order suggests a solution of the change which ultimately took place in the character and working of these lower seats of learning. For, whereas, in the days of Fortescue, they were the receptacles of the young nobility and gentry, we shall find that in the 17th century the resort to them was exclusively confined to legal practitioners. Hence, Lord Campbell tells us, that the great luminary of the law, Sir Matthew Hale, was admitted a student of Lincoln's Inn, without having previously belonged to any of the Inns of Chancery; "these establishments having been by this time," says his lordship, "entirely abandoned to the attorneys."

### POINTS IN EQUITY PRACTICE.

#### MOTION TO PAY MONEY INTO COURT ON CERTIFICATE.

ON a reference to Chambers to take an account of rents due from the defendant to the plaintiff, the chief clerk certified their amount at 210*l.*, and the certificate was signed by the Judge on December 11, and filed on the following day.

On a motion (December 16) to pay the money into Court before the expiration of the eight days allowed by order 51 of October 16, 1852, the *Master of the Rolls* said—"This is a certificate and not an order. If the defendant were to move within the eight days, insisting that the 210*l.* were not due, I should not order the money into Court until the motion had been disposed of. In the case of the *York and North Midland v. Hudson*, 18 Beav. 70, I considered the certificate confirmed as soon as I heard and disposed of the defendant's objection, or as soon as the time giving liberty to move had expired; neither of these have occurred in the present case. I cannot make this order, but the motion may stand over until the 21st, when the eight days will have expired." *Douthwaite v. Spensley*, 18 Beav. 74.

#### OPENING BIDDING AFTER CERTIFICATE SIGNED ON SALE UNDER DECREE.

Certain leasehold property was sold by suction under a decree of the Court, and the Vice-Chancellor had signed the certificate approving the purchaser of lot 1 at 100*l.*

On a motion to open the biddings upon an advance of 50*l.*, and the payment of the costs, charges, and expenses of the former purchaser, and of the future sale, Vice-Chancellor Wood

said that his signing the certificate was only equivalent to the order nisi confirming the Master's report of the purchase under the former practice; and by 15 & 16 Vict. c. 80, s. 34, and order 51 of October 16, 1852, eight days were given after such signature and the filing of the certificate, within which the certificate might be discharged. The application was not, therefore, too late; and upon an undertaking to abide by any order which the Court might make for payment of the whole or any part of the expenses of the second sale, the application would be granted on the terms offered. *Bridger v. Penfold*, 1 Kay & Johnson, 28.

### RIGHT OF ATTORNEYS TO PRACTICE IN THE COUNTY COURTS.

To the Editor of the Legal Observer.

"But is this law?"

Aye, marry is it, [County] Court law!"

Hamlet.

SIR,—In the article on *Unlicensed Parliamentary Practitioners*, in your *Observer* of the 24th ult., you inform your readers, that "No man could practice in the Old County Courts any more than he can in the new, without being an attorney of the Courts of Westminster." When you penned this paragraph, I presume it had escaped your memory that the 91st sect. of Statute 9 & 10 Vict. chap. 95, not only recognises the right of every "attorney of one of her Majesty's Superior Courts of Record, or a barrister-at-law instructed by any such attorney on behalf of the party," to appear in the new County Courts for or against a litigant, but confers the same right upon, "any other person who is allowed by the Judge to appear, &c." I am of course aware that the best commentators on this section think, and that the ablest Judges in Westminster Hall have intimated, that this power should be used but sparingly—

"Dabiturque licentiâ sumptâ pudenter;"

but surely, Sir, there are grounds for arguing that the text-book writers, you yourself, and the superior Judges are all wrong together, while Mr. Serjeant Clarke, the Judge of the County Court of Wolverhampton, is quite right in thinking that the prerogative of giving brevet rank to any one they may delight to honour, is vested absolutely in himself and brethren, who may make such use of it as they think proper, since the Statute gives it them, and to confer a right, and then restrict its exercise were illusory. It might, indeed, be argued, and it is true, undoubtedly, that a County Court Judge may by possibility extend this privilege to an unworthy favourite; but this objection, although plausible, vanishes at once, or becomes "immaterial," when we reflect that certainly the less the man deserved

the more would be the merit in his benefactor's bounty.

Again, some captious cavillers contend, that when an Act of Parliament required that all attorneys practising in England and Wales should take out and annually renew certificates, it by a clear and necessary implication restrained attorneys who had no certificates from practising. But, sir: "*expressum facit cessare tacitum*;" and thus the Reverend Roger Thwackum reasoned, when because he was forbidden by the Tenth Commandment to covet his neighbour's wife, he inferred sagaciously that he might covet his neighbour's sister. So, Mr. Serjeant Clarke, aware that the certificate-enjoining Act makes, *eo nomine*, no mention of the town of Wolverhampton, when by their Law Association told, that "a gentleman not having a certificate frequently appeared before him as an advocate," made answer, that "it was immaterial to him whether attorneys practising as advocates in his Court had certificates or not, so long as they did not misconduct themselves." To "him," no doubt, it may be "immaterial," since he is not the Chancellor of the Queen's Exchequer, but a Judge supreme in his own local Court, and far too great a man to pay attention to Statutes passed for purposes of mere revenue. It may be said then, "Does he not, by so acting, render void the law?" I answer, "No! he magnifies if he don't make it honourable." For, sir, to magnify is to increase or heighten, as when a man, permitted by an existing Statute to allow "any person other than an attorney, &c.," to appear, &c., takes on himself to exercise a summary dispensing power, and extend the privilege of practising without certificates, not only to those "other persons," who, as we all know, do not need them, but to "attorneys," whom the law most positively requires, should have and hold and annually renew certificates. Thus doth the serjeant—

"Why, sir, doth he so?"

The why's as plain as way to parish church."

He has learned from personal experience in his County Court, that while the mere possession of a certificate is no criterion of an attorney's talents or integrity, the want of one so long at least as the law requires and the Judge dispenses with it, must tend to render the practitioner so favoured, obsequious, pliant, fawning, truckling, and submissive, and ready lustily to yelp and howl, or even vigorously to swear down if necessary, whoever dares to think with independence, or murmur when "his Honour," as they call him, perpetrates, what men of small repute, like Sir John Paterson, call "things by no means proper to be done." Far be it from me, sir, to censure, though I suffer from the zealous gratitude of the serjeant's squadron of irregulars, I don't doubt that many uncertificated attorneys may

be good, and I full well know that some are very sharp, practitioners; *legales acutissimi*, so I will for my part say no worse of any of them, than Mrs. Blackmore said of Parson Supple: "To be sure, I wishes that he had but a little more spirit to tall the squire of his wickedness; but then his whole dependence is on the squire, and so the poor gentleman, though he is a very religious good sort of a man, and talks of the badness of such doings behind the squire's back, yet he dares not say his soul is his own to his face."

LEGALIS.

Temple, February 28, 1855.

## REPORT ON EDUCATION.

### CHARACTER OF LAWYERS.

IN the recent interesting Report on the Education of the Civil Service of the Country, the following just testimony is paid to the great body of solicitors, by John G. Shaw Lefevre, Esq., C. B., Clerk Assistant to the House of Peers:—

"The objections that have hitherto been made to the suggested arrangements for the re-organisation of the civil service, appear mainly to be,—1st, That they will not secure the appointment into the public service of gentlemen having the high sense of honour requisite for the satisfactory discharge of confidential duties; 2ndly, That it will be impossible to secure absolute fairness in the examination. Upon the first, I would observe, that such a sense of honour is not confined to those who are engaged in the public service, but exists also in the members of other professions. If we consider the vastly numerous body of apothecaries, and surgeons dispersed throughout the country, and the confidence which must of necessity be reposed in them, the slightest breach of which might endanger the peace and happiness of families, we shall find that there exists among these large classes, the strongest sense of professional honour, and that the betrayal of any information which they have obtained professionally, is of very rare occurrence.

"The same may be said of Attorneys and Solicitors, taken as a class, upon whose honour and integrity the fortunes of almost every one, and the characters of many, entirely depend."

## POSTAGE TO AND FROM FRANCE.

By a recent arrangement with France, the whole postage on a single letter between any town in that country and any town in the United Kingdom has been reduced to 4d., of which the French Post Office is to have 2½d. for its inland service, and the English 1½d. for the inland charge and Channel transit. The whole postage of 4d. must be prepaid; otherwise double postage will be required.

<sup>1</sup> *Legal Observer*, 24th February, 1855, pp. 323-4.

## CANDIDATES WHO PASSED THE EXAMINATION.

*Hilary Term, 1855.*

| <i>Names of Candidates.</i>                 | <i>To whom Articled, Assigned, &amp;c.</i>                            |
|---|---|
| Alder, William . . . . .                    | Henry Footner   |
| Arboun, Sidney . . . . .                    | Robert Few  |
| Arthy, William Ayton . . . . .              | William Swaine  |
| Barber, George Henly . . . . .              | Henry Mason   |
| Benyon, Thomas . . . . .                    | Richard Rees; Samuel Brockman Edwardes                                |
| Birchall, Richard . . . . .                 | Thomas Birchall; William Ackerley                                     |
| Blincow, Valentine Budd . . . . .           | Thomas Morris; Edmund Kell Blyth                                      |
| Benson, John . . . . .                      | Richard Dawes   |
| Burdekin, Benjamin, jun. . . . .            | Albert Smith  |
| Burne, Henry Holland . . . . .              | Frederick Downing; Edward White                                       |
| Chapman, Laurence Forster . . . . .         | Benjamin Field; Henry Toogood   |
| Clayton, William . . . . .                  | William Drabble   |
| Coham, Aracott Bickford Courtenay . . . . . | William John Frederick Marshall; William Parr                         |
| Coode, Frederick . . . . .                  | George Graham White   |
| Day, George Newton . . . . .                | George Game Day   |
| Espinasse, Isaac . . . . .                  | Philip Longmore   |
| Everall, John, jun. . . . .                 | John Bowley   |
| Freeman, Stonbrow Panker . . . . .          | Thomas Hilton Bothamley   |
| Grimmer, William Henry . . . . .            | Marmaduke Foster; John Switthinbank                                   |
| Haines, William Tertius . . . . .           | William Haines; Frederick Isaac Welch                                 |
| Headale, Robert . . . . .                   | Robert Artindale  |
| Hawks, Augustus . . . . .                   | Edward Robert Spence  |
| Heath, Richard Child, B.A. . . . .          | Thomas Heath  |
| Hobson, William . . . . .                   | Edward Tyson  |
| Hough, William Henry . . . . .              | Henry Hough; Frederick Charaley                                       |
| Howell, Marmaduke George . . . . .          | Charles Rose Lucas  |
| Hughes, Richard Deaton . . . . .            | Joseph Lambourne Smith  |
| Jones, John . . . . .                       | Edward Williams   |
| Jordan, Charles James Rufus . . . . .       | William Ridson Hall Jordan  |
| Julius, Edric Adolphus . . . . .            | John Marsden  |
| Kaye, John Pass . . . . .                   | Thomas Smith James  |
| Kenyen, Edmund Peel . . . . .               | John Buck Lloyd   |
| Knight, Anthony . . . . .                   | Edmund Boyle Church   |
| Laker, John, jun. . . . .                   | David Tanner Sweetlove; Charles Morgan                                |
| Langbourne, John Vickerman . . . . .        | Charles Ranken Vickenman  |
| Masturk, George Gladstone . . . . .         | John Atkinson   |
| Mant, George French . . . . .               | Arthur Mant; George Waugh   |
| Marrack, Richard . . . . .                  | Richard Michell Hodge   |
| Mogg, Frederick George . . . . .            | Vines & Hobbs   |
| Munby, John Forth . . . . .                 | Joseph Munby  |
| Newsham, Henry, jun. . . . .                | Thomas Potter Cunliffe  |
| Pawson, Charles William . . . . .           | Francis Johnson Jessopp   |
| Pattison, Henry John . . . . .              | Henry Brayley Wedlake   |
| Peed, Robert Josiah . . . . .               | Henry Edwards Brown; Richard Henry Wyatt                              |
| Parkins, Frederick . . . . .                | Richard Parkins   |
| Plunkett, Henry . . . . .                   | Henry Corser  |
| Rasbleigh, William Beyes . . . . .          | John Edward Buller  |
| Richards, Thomas Francis . . . . .          | Francis Heat; James Fluber  |
| Sandys, Edwin . . . . .                     | James Thomas Conkney  |
| Seale, Edward Wilmot, jun. . . . .          | Herbert Henry Poole   |
| Shaw, Thomas William . . . . .              | Stevens Tripp   |
| Smith, John Edward . . . . .                | John Arthur Ikin  |
| Stephenson, William, jun. . . . .           | John Earnshaw   |
| Stone, Samuel Francis . . . . .             | Samuel Stone  |
| Stott, William . . . . .                    | William Slater; Nathaniel Charles Milne                               |
| Tasen, Charles, jun. . . . .                | John Crip Webster   |
| Tatlock, John . . . . .                     | John Hostage  |
| Thompson, Theophilus Wathen . . . . .       | Alfred Howard   |
| Tomlin, William, jun. . . . .               | Charles Britten   |
| Tucker, Edward . . . . .                    | William Coleman Gill  |
| Vanles, Henry Edmund . . . . .              | Arthur James Lane; Thomas Clark                                       |
| Walter, Alfred . . . . .                    | George Edmunds  |
| Ward, Samuel Broomhead . . . . .            | Coard Wm. Squarey; Andrew Tucker Squarey;<br>John Alexander Radcliffe |
| Waring, Henry . . . . .                     | Re-examined on renewing Certificate                                   |
| Whitgreave, Thomas John . . . . .           | Samuel Wilkinson, jun.  |
| Whitter, Tristram . . . . .                 | Thomas Leigh Teale Rendell  |
| Wood, Walter . . . . .                      | James Joseph Blaker   |
| Woodbridge, Thomas Hurry Riches . . . . .   | Edgar Blaker; Robert Gamlen   |
| Wright, Wilham Walton . . . . .             | Edward Henry Richards   |

## NOTES OF THE WEEK.

## BUSINESS IN CHAMBERS OF VICE-CHANCELLOR STUART.

FROM a return to the House of Lords ordered to be printed 8th February last, it appears that there have been 79 suits and matters brought into the Chambers of Vice-Chancellor Stuart in the year 1853, in division A. to K., and 59 in division L. to Z.

The return gives the titles of the several causes and matters, with the general objects of the same—the date of the decree or order, and when it was brought into Chambers—the state of the proceedings on March 24, 1854, and the general effect of the last order, and also when the last meeting or hearing was had, and the cause of the delay, where any has occurred.

## POSTPONEMENT OF CHANCERY CAUSES.

Two causes having been postponed by the Lord Chancellor, at the request of counsel, the parties in the following cases were not ready to proceed.

The Lord Chancellor said, that he would not in future listen to any application for postponing cases to suit the convenience of counsel. The Court by so doing had now nothing to go on with, and much valuable time would be lost to the public. The case in question would be placed at the head of the paper on the next day of the Court's sitting; but it must be distinctly understood that every case in future would be taken in its turn as it appeared in the list.

## POSTAGE ABOLISHED ON RE-DIRECTED LETTERS.

Hitherto a letter sent from Edinburgh to Fleet Street, London, upwards of 400 miles distant, cost only a penny; but if that letter was afterwards re-directed from Fleet Street to Hackney another charge of a penny was made. This charge has now been abolished. Letters re-directed by the Post Office authorities from any place in a postal district to any other place in the same district are not liable to re-directed rates.—*Observer*.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Court of Chancery.

(Coram Lord Chancellor and Lord Justice.)

*In re Pearse, ex parte Littledale.* Feb. 28, 1855.

## BANKRUPT.—STOCK AND SHARES IN ORDER AND DISPOSITION OF, WITH CONSENT OF OWNER.

*Certain stock in a dock company and shares in an insurance office were assigned by P. in 1846, by way of equitable mortgage, to the petitioner to secure an advance, but no notice of such an assignment was given to either company, in order that P. might not be deprived of his office of director, which would have been the case if it had been known. He, however, gave notice on June 9, 1854, and on the 17th, P. committed an act of bankruptcy: Held, reversing the decision of Mr. Commissioner Goulburn, that the petitioner was entitled to the benefit of the stock and shares.*

It appeared, on this appeal from the decision of Mr. Commissioner Goulburn, that certain stock in the East and West India Dock Company, and shares in the Imperial Fire Insurance Company, had been assigned by Mr. Pearse in 1846 to Mr. Littledale by way of equitable mortgage, to secure a loan of 2,500*l.*, but that no notice was given to either companies until June 9, 1854, when a meeting of Mr. Pearse's creditors was held. Mr. Pearse committed an act of bankruptcy on the 17th June following, and the assignees claimed the shares on the ground that they were in the order and disposition of the bankrupt with the consent of the real owner. It further appeared, that Mr. Littledale had omitted to give notice to the companies, in order to prevent Mr. Pearse

losing his qualification of being a director. Mr. Littledale having presented his petition for a declaration, that the equitable mortgage prevailed, and that the stock might be sold, the Commissioner dismissed his petition, whereupon this appeal was presented.

*Bacon and Bagley* in support; *Selwyn and Coleridge*, contra.

The Court said, the question was, whether the petitioner was entitled to claim the property as against the general creditors. It appeared that the Dock Act, which required a particular mode of assignment to be followed, did nothing more than lay down the form of a legal transfer, in the same way as was required in respect of land. The petitioner was not therefore shut out from any equity because he had omitted to perfect his legal title: *Ex parte Masterman*, 4 Deac. & Ch. 751; 2 Mont. & A. 209. It was argued, that there had been fraud in allowing the bankrupt to continue the apparent owner of the stock, but no contract existed that no notice of the mortgage should be given, but it was the ordinary case of a person taking a security which was incomplete until notice was given. The petitioner had, however, perfected his title by giving notice to the companies on June 9 from which time his title was complete, as the act of bankruptcy did not take place until the 17th. By that step the petitioner had done all he could to perfect his title and vest the property in himself, and as he had done so before the bankruptcy the stock or shares did not remain in the bankrupt's order and disposition with the consent of Littledale. The decision of the Court below would therefore be reversed, and the declaration be made as asked by the petitioner.



**Master of the Rolls.****Attorney-General v. Corporation of Great Yarmouth.** March 2, 1855.**MUNICIPAL CORPORATIONS' ACT. — POWER TO GRANT LEASES OF CORPORATION LAND AT NOMINAL RENT AND FINE.**

*Held, that under the 5 & 6 Wm. 4, c. 76, s. 94, a corporation has not power to grant a lease of corporation land at a rent and on a fine under the actual value of the same, where the previous lease had expired, and such proposed lease could not be considered as a renewal thereof, and a declaration was accordingly made on information to that effect and an injunction granted,—but without prejudice to an application to the Lords of the Treasury under the Act.*

THIS information was filed to restrain the defendants from granting a lease of certain corporate property at a nominal rent and a fine. It appeared that in 1778 a lease for 21 years had been granted to a Mr. Moore, at a rent of 5s. and a fine of 7s. 6d., and that it had been renewed on its expiration in 1798 upon the same terms. When this latter lease expired, Mr. Moore held as tenant from year to year on the original terms until 1824, when the defendants granted another lease as before, which had now expired, and this information was filed to prevent a new lease being granted on the same terms upon the ground that they were inadequate to the value of the land, and that the 5 & 6 Wm. 4, c. 76, s. 94,<sup>1</sup> took away the power of granting such leases.

<sup>1</sup> Which enacts, that "it shall not be lawful for the council of any body corporate to be elected under this Act" "to demise or lease except in pursuance of some covenant, contract, or agreement, *bond fide* made or entered into on or before the said 5th day of June, by or on the behalf of such body corporate," "or except in the cases hereinafter-mentioned, any lands, tenements, or hereditaments of such body corporate, or any part thereof," "for any term exceeding 31 years from the time when such lease shall be made," "and in every lease which the said Council is not hereby restrained from making, there shall (except in the cases hereinafter-mentioned) be reserved and made payable during the whole of the term thereby granted, such clear yearly rent as to the Council shall appear reasonable, without taking any fine for the same: provided, nevertheless, that in every case in which such Council shall deem it expedient" "to demise or lease for a longer term than 31 years, or upon different terms and conditions than those hereinbefore-mentioned, any of the said lands, tenements, or hereditaments, it shall be lawful for such Council to represent the circumstances of the case to the Lords Commissioners of his Majesty's Treasury; and it shall be lawful for such Council, with the approbation of the said Lords Commissioners, or any three of them, to" "demise any of the lands, tenements,

*Follett and Cairns* in support; *Palmer and Hall* for the defendants; *Scott* for the lessee, contended he was entitled, at all events, to compensation.

The *Master of the Rolls* said, that the 94th section of the Municipal Corporation Act restricted corporations from granting leases, unless at the actual value of the land, with the exceptions specified in section 95,<sup>2</sup> none of which applied here. The grant of another lease upon the expiration of the tenancy from year to year could scarcely be looked on as a continuation of the former leases, as it was a separate and independent transaction. The land was not now under lease, as the last had expired, and the question was whether the defendants had power to renew it under the clause referred to. It seemed that they had not, and a declaration must be made to that effect, with an injunction. As to the claim for compensation, as there was no subsisting lease or interest, it could not be supported. But this decision was to be without prejudice to any application to the Lords of the Treasury on the subject under the Act.

**Vice-Chancellor Kindersley.****Stiles v. Shipton.** Jan. 28, 1855.**DISMISSING BILL AGAINST DISCLAIMING DEFENDANT. — SERVICE OF NOTICE OF MOTION.—COSTS.**

*A motion was granted to dismiss the bill as against a defendant who disclaimed—the plaintiff paying his costs, but without prejudice to the ultimate payment thereof, and without service of notice of motion on the other defendants.*

THIS was a motion to dismiss this bill as against a defendant named Shipton, who had disclaimed—the plaintiff paying his costs, but

and hereditaments of the said body corporate in such manner and on such terms and conditions as shall have been approved by the said Lords Commissioners."

<sup>2</sup> Which provides that "in all cases in which any body corporate shall on the 5th day of June, in this present year, have been bound or engaged by any covenant or agreement express or implied, or have been enjoined by any deed, will, or other document, or have been sanctioned or warranted by ancient usage, or by custom or practice, to make any renewal of any lease for years," "at a fine certain or under any special or specific terms or conditions, and also in all cases in which any body corporate shall theretofore have ordinarily made renewal of any lease for years," &c., "upon the payment of an arbitrary fine, it shall be lawful for the Council of such borough to renew such lease for such term or number of years," "and at such rent, and upon the payment of such fine or premium, either certain or arbitrary, and with or without any covenant for the future renewal thereof, as such body corporate could or might have done in case this Act had not been passed."

without prejudice as to the ultimate payment thereof. It appeared that notice of motion had not been given to the other defendant.

*Toulmin* in support, cited *Baily v. Lambert*, 5 Hare, 178.

The Vice-Chancellor made the order as asked.

*Lake v. Currie.* March 2, 1855.

ORDER TO CARRY FUNDS TO SEPARATE ACCOUNT TO ANSWER ANNUITIES ON LAND SOLD UNDER DECREE. — SUCCESSION DUTY.

*Upon the sale by decree in a suit of land charged with two annuities, and where the purchaser under the conditions of sale was to accept a sufficient indemnity and not to require a release from the annuities, held that in drawing up the order to carry over to separate accounts sufficient to answer the annuities, the registrar had properly inserted the words, "subject to succession duty," pursuant to the order of March 9, 1854.*

It appeared that an estate called the Tring Grove Estate had been sold under a decree in this suit to Mr. Butcher for 24,000*l.*,—one of the conditions of sale being that it was subject to two annuities of 200*l.* each to two parties, and that he should accept a sufficient indemnity and not require a release of the same. It further appeared that sufficient sums had been carried over in the suit to separate accounts to meet these annuities, and the registrar having inserted the words "subject to succession duty," as provided by the Order of March 9, 1854,<sup>1</sup> the parties beneficially interested objected thereto.

<sup>1</sup> Which directs, that "the registrar in drawing up any decree or order whereby the Accountant-General shall be directed to pay or transfer any fund or part of any fund in respect of which any duty shall be payable to the revenue under the Acts relating to Legacy or Succession Duty, shall, unless such decree or order expressly provide for the payment of the duty, direct the Accountant-General to have regard to the circumstance that such duty is payable; and where by any decree or order any carrying over to a separate account of any fund in respect of which any such duty may be chargeable shall be directed, the registrar shall add the words 'subject to Legacy Duty,' or 'subject to Succession Duty,' as the case may be, to the title of the account; and in order the better to provide security against the payment or transfer by the Accountant-General of any fund chargeable with any such duty, without the duty being first paid, the Accountant-General, on receiving notice from the proper officer that the duty is payable, is to cause a memorandum to be made in his books in conformity with such notice. And the Accountant-General, before executing any decree or order, directing the payment or transfer of any fund, or part of any fund, in respect of which

*C. Chapman Barber* for such parties; *Premdergast* for the purchaser, referred to the 16 & 17 Vict. c. 51. ss. 5, 42, and 53.

*Campbell* for other parties.

The Vice-Chancellor said, that the general order directed the insertion of the words in question, where duty might be payable or chargeable, and the purchaser could not be prejudiced as the fund could not be touched, and the registrar had taken the right course in drawing up the order.

Vice-Chancellor Wood.

*Wood v. Scarth.* March 2, 1855.

EVIDENCE.—ENLARGING TIME FOR CLOSING. — RECALLING WITNESS AND EXAMINING ANOTHER AFTER CASE CLOSED.

*Order to extend the time for closing the evidence on adjourned summons from chambers, and for leave to the plaintiffs to recall a plaintiff who had been examined and cross-examined as a witness before the examiner, and also to examine a new witness, notwithstanding their case had closed and the defendants were examining their witnesses,—where it appeared that such evidence was required to clear up a conflict of evidence which had been brought out by the examiner, and not on examination or cross-examination.*

THIS was a motion for leave to the plaintiffs to adduce further evidence in this suit before the examiner, and to the plaintiff, Mr. Wood, to attend for further examination as a witness in their behalf; and it was also asked, on adjourned summons from chambers, to enlarge the time for closing the evidence. It appeared that a witness named Sheddon had been examined by the plaintiffs and cross-examined by the defendants, and that upon certain questions being put by the examiner, he produced a pocket-book and read an entry therein which he had made upon an interview between himself and the defendant. The plaintiff Wood and another witness were examined on the following day, and the solicitor then stated the plaintiff's case to be closed, whereupon that for the defendants was entered into, when the defendant denied the entry above referred to. The plaintiffs then applied to recall Wood as a witness to whom Sheddon had read the entry in question, and to examine another person; and on the examiner having refused without the defendants' consent (which was withheld) this motion was made.

*W. D. Lewis* in support.

*W. M. James* and *Freeling*, contra, referred to the 15 & 16 Vict. c. 86, s. 31, which enacts, that "such examination, cross-examination,

any such duty shall be payable, shall require the production of the official receipt for the duty, or a certificate from the proper officer of the payment of the duty chargeable in respect of any such fund or any portion thereof respectively, by any such decree or order directed to be paid or transferred."

and re-examination, shall be conducted as nearly as may be, in the mode now in use in Courts of Common Law, with respect to a witness about to go abroad, and not expected to be present at the trial of a cause."

The Vice-Chancellor said, that there was nothing in the Act which precluded any new witnesses from being examined, until the evidence was closed. As to the old witness, there might be some objection, but as the circumstances were special in the present case, the evidence of the defendant amounting to a direct contradiction of what had been sworn by the witness Shaddon, leave would be given to recal the witness Wood, in order to clear up the conflict of evidence; and the time would also be extended for closing the evidence.

*Re Devon United Mining Company.* March 3, 1855.

WINDING-UP JOINT-STOCK COMPANY, ON PETITION OF SHAREHOLDER SUED.

*Order to wind up joint-stock company on the petition of the holder of shares on which all the calls had been paid, and who had been sued for two debts of the mine.*

THIS was a petition on behalf of the holder of shares in the above joint-stock mining company, who had paid all the calls thereon, and had been sued in respect of two debts of the concern, for an order to discharge and wind-up the company.

*Roxburgh* in support.

The Vice-Chancellor made the order accordingly.

#### Court of Queen's Bench.

*Dewlay v. Younghusband.* Jan. 12, 1855.

OFFY OF LONDON SMALL DEBTS' EXTENSION ACT, 1852.—SUGGESTION TO DEPRIVE OF COSTS.

*The plaintiff in an action to recover damages for the breach of a covenant to keep a house in repair, obtained a verdict for 20l.: a rule was made absolute to enter a suggestion under the 15 & 16 Vict. c. lxxvii. s. 119, to deprive the plaintiff of costs on an affidavit stating that the defendant dwelt at Gerard's Hall, within the district of the City of London Small Debts' Court, and that the plaintiff at that time did not live more than 20 miles from him, but in Watling Street, at a distance of not more than half a mile.*

THIS was a rule nisi to enter a suggestion under the 15 & 16 Vict. c. lxxvii. s. 119<sup>1</sup> (London (City) Small Debts' Extension Act, 1852), to deprive the plaintiff of costs in this

<sup>1</sup> Which enacts, that "if any action shall be commenced after the commencement of this Act in any of her Majesty's Superior Courts of Record, for any cause other than those lastly hereinbefore specified [where the plaintiff dwells more than 20 miles from the defendant, &c.], for which a plaint might have been entered in the Court holden under the provisions of this Act, and a verdict shall be found for the plain-

action to recover damages for the breach of a covenant to keep a house in repair, and in which he had obtained 20l. damages. It appeared that the affidavit on which the rule had been obtained, stated that the defendant dwelt at Gerard's Hall, within the district of the Court, and that the plaintiff at that time did not live more than 20 miles from him, but in Watling Street, at a distance of not more than half a mile.

*Macnamara* showed cause on the ground that the affidavit was insufficient.

The Court (without calling on *Duncan* in support) said, that the rule must be made absolute.

#### Queen's Bench Practice Court.

(*Coram Erle, J.*)

*Regina v. Inhabitants of Gate Fulford, York-shire.* Jan. 20, 1855.

INDICTMENT FOR NON-REPAIR OF HIGHWAY.—AFFIDAVIT IN SUPPORT OF APPLICATION FOR CERTIORARI.

*An application for a certiorari to bring up an indictment for the non-repair of a highway was refused where the affidavit in support was not as required by the 16 Vict. c. 30, s. 4, although sufficient according to the former practice.*

THIS was an application for a certiorari to remove an indictment for the non-repair of a highway in the above township.

*Price*, in support, said, that the affidavit in support was sufficient according to the old practice, but did not comply with the requirements of the 16 Vict. c. 30, s. 4, which enacts, that "no indictment, except indictments against public bodies corporate not authorised to appear by attorney in the Court in which the indictment is preferred, shall be removed into the Court of Queen's Bench, or into the Central Criminal Court, by writ of certiorari, either at the instance of the prosecutor or of the defendant (other than the Attorney-General acting on behalf of the Crown), unless it be made to appear to the Court from which the writ is to issue, by the party applying for the same, that a fair and impartial trial of the case cannot be had in the Court below, or that some question of law of more than usual difficulty and importance is likely to arise upon the trial, or that a view of the premises in respect whereof any indictment is preferred, or a special jury, may be required for the satisfactory trial of the same."

The Court said that the application must be refused.

tiff for a sum not more than 50l. if the said action is founded on contract, or less than 5l. if it be founded on tort, the said plaintiff shall have judgment to recover such sum only and no costs; and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs as between attorney and client, unless in either case the Judge who shall try the cause shall certify on the back of the record that the action was fit to be brought in such Superior Court."

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

— Still attorneyed at your service."—Shakespeare.

SATURDAY, MARCH 17, 1855.

### PUBLIC PROSECUTORS AND OFFICIAL DISTRICT AGENTS.

#### SUPERSEDING ATTORNEYS AT LAW IN CRIMINAL CASES.

THERE appears to be a disposition amongst our Law Reformers to supersede, as far as possible, the employment of professional men, and to assign the performance of their functions to Commissioners and their subordinate officers. This course of proceeding sets at naught the old established principle of *competition* amongst all classes to which the public have been accustomed to look for the services they require. The first steps in this direction commenced with the appointment of Official Assignees in Bankruptcy and Insolvency, and in delegating to bailiffs and messengers much of the business formerly transacted in the offices of Solicitors.

If it be expedient that the regular practitioners in the several branches of the Law should be no longer employed, as they are now, by their respective clients; but that their duties should be transferred to Commissioners and their clerks or officers—like joint-stock companies for the administration of justice—we would ask why the same principle should not be carried into other professions? Why should not Commissioners of Health and official medical assistants be appointed instead of apothecaries, general practitioners, surgeons, and physicians? Why should there not be institutions for building bridges and houses by official engineers and architects, in lieu of entrusting those works to men of individual skill and experience selected by the parties who require them? So if the principle of general competition is to be exploded, why should

not the same process be applied to the ordinary affairs and business of trade and commerce? Why should not the baker and butcher be superseded in their individual vocations, and the wants of the community supplied by Commissioners, public officers, or joint-stock companies? Let the community well consider whether these projects for managing and conducting affairs by joint-stock companies and Commissioners are calculated to be as beneficial as the present system of individual enterprise, skill, and diligence.

We can understand that under the operation of these schemes, the patronage of the Government would be largely increased, and the promoters of such measures may naturally expect to obtain lucrative appointments, and we need not be surprised therefore that the Legislature is annually called upon to consider various ingenious projects by which a small number of persons may be exalted into undue importance, at the expense and to the injury of the existing arrangements.

Applying these general remarks to the present tendency of legislation, we come to consider the Bill now submitted to the House of Commons for the administration of criminal justice through the medium of public prosecutors, assistant prosecutors, district agents, &c. &c., in lieu of the system now conducted by the counsel, attorneys, and agents, chosen by the parties whose property has been stolen, or who have sustained personal injury.

One of the consequences of the present practice is, that where the injured party is enabled to choose his own legal adviser, he is generally satisfied if he be advised to abstain from prosecution; or if it be determined to proceed, he will be content with

the result, though unsuccessful, because the proceedings are conducted by his own attorney; but if he must go to the official agent in whom he has no personal confidence, and the agent should refuse to take up the case, there will be danger of the aggrieved party taking the law into his own hands, or if the result be unsuccessful he will be apt to blame the official agent for negligence or want of zeal; and thus the administration of criminal justice will suffer in public esteem.

According to the present practice in criminal proceedings, the actual owner of the property, or the person injured, employs his own attorney to prosecute, or else entrusts the case to the police, who bring the witnesses before the police magistrate or justices of the peace, who, with the assistance of their clerks, deal with the charge, and the prisoner is released if there be no case; or he is remanded from time to time till the necessary evidence can be procured and taken on oath before the magistrate or justice, and then the prisoner is committed for trial, and the depositions are returned to the proper officer of the court of assize or sessions, who prepares the bill of indictment, and if there be no attorney employed by the prosecutor, the depositions (if the case be of sufficient importance) are handed to a member of the Bar who conducts the case upon the trial.

Now, it is proposed by the present Bill to substitute for this simple practice, the complicated machinery which the preamble of the Bill states "will conduce to the efficient administration of justice."

The kingdom is to be divided into districts (sect. 1), and the Lord Chancellor is to appoint for each district (sect. 2), one or more Barristers-at-Law of not less than *ten years'* standing, to conduct the criminal prosecutions. Power is also given to appoint Deputy Public Prosecutors (sects. 6 and 7), who shall be Barristers of not less than three years' standing, and in addition to the Public Prosecutors and the Deputy Public Prosecutors, there is to be a staff of Assistant Public Prosecutors (sect. 8), who are to be Barristers of not less than five years' standing, to conduct the prosecutions at Quarter Sessions.

Having created this expensive staff of some hundreds of Barristers to be Public Prosecutors, Deputy Public Prosecutors, and Assistant Public Prosecutors—ranging from three to ten years' standing—and who are to enjoy liberal salaries, not exceeding 1,500*l.* a year, we might expect to find that they

would have some important duties to perform, but in fact their vocation is a mere delusion, for another class of officers are to be appointed under the Act, who are to execute the work, viz., "*District Agents*;" they are to be *Attorneys-at-Law* of not less than seven years' standing, or *Barristers* of not less than five years' standing. But this is not all, for the Justices are, in addition, to appoint *Attorneys-at-Law* to assist these District Agents, and they are the only officers who will really do the work, and the duties of this last-mentioned staff are (sects. 10 and 12) "to apply for warrants, to attend and conduct the examination of witnesses at Police Courts and before Justices, to investigate the evidence, to transmit copies of all depositions of witnesses and statements of prisoners to the Public Prosecutors, to communicate and receive instructions from the Public Prosecutors, to attend the trial, and perform all the other duties of an attorney for the prosecution;" and the intelligent Magistrate, who has all the experience of years and has taken the depositions personally, is to advise with the Public Prosecutor, who knows nothing of the case, except from reading the depositions sent to him; and the Public Prosecutor is to determine whether the accused is to be committed for trial or not:—thereby depriving the Magistrate virtually of any real authority in the exercise of his discretion.

Thus, this learned body of Barristers, appointed under the patronage of the Government, are to direct the ablest and most experienced Magistrates whether they are to commit the accused for trial or not. This appears to be the only duty of the "*Public Prosecutors*," in addition to holding the brief at the trial, instead of the gentlemen of the Bar who now, on receiving the depositions, satisfactorily conduct the case.

This complicated machinery of Public Prosecutors, Deputy Public Prosecutors, Assistant Public Prosecutors, District Barrister-Agents, District Attorney Agents, and District Attorney's Assistant Agents, instead of assisting the administration of Justice, will, we apprehend, impede and obstruct it, and instead of performing the present simple duties in the administration of the law, will often cause great delay, vexation, and injustice.

It is, indeed, quite clear that the expense to the country will be enormous, and that this complex machinery and increased number of officials will create confusion

amongst those who are to perform the several duties of the office, or it will end in the District Assistant Attorneys appointed by the Justices being compelled to do all the work, and the rest will be little more than sinecure appointments.

It should be added, that the Bill contains a clause (the 17th) authorising persons to conduct prosecutions as heretofore; but this is to be at *their own costs and charges*; and doubtless these cases will be exceedingly rare.

The 16th clause also gives the Magistrate power to commit the accused for trial, notwithstanding the opinion of the Public Prosecutor, but then no costs will be allowed, unless the Judge, or Recorder, or Chairman of the Sessions, certifies in favour of the prosecution.

### REMUNERATION OF SOLICITORS.

It is some weeks since we called attention to the subject of the remuneration of Solicitors. Since then an important general order has been made, dated the 2nd of February, by which it is directed that where the preparation of a case before a Judge in Chambers shall have required and received from the Solicitor such extraordinary *skill and labour as materially* to conduce to the *satisfactory and speedy* disposal of the business, and therefore shall appear to the Judge to deserve higher remuneration than the ordinary fees, the Judge may allow such further fee, not exceeding *ten guineas*, as in his discretion he may think fit, instead of the fee of *one guinea* under the order of October 23, 1855.

This improvement in the scale of fees for proceedings in the Judges' Chambers in cases where more than ordinary skill and labour have been exercised is but just and reasonable, and will tend to benefit the suitors and expedite the business of the Court. In the previous state of the rules of taxation, whatever pains were taken to prepare a case for hearing before the Judge or chief clerk, and whatever length of time was bestowed in the preliminary consideration and skilful selection and arrangement of the evidence, whether documentary or otherwise, the Solicitor was allowed only a guinea for the hearing. The only mode by which he could be entitled to a fee adequate to the time occupied, was by bringing the various points of inquiry at separate attendances before the officer and obtaining

adjournments from time to time, till the inquiry or investigation was completed. Supposing a pedigree case, or an account in an administration suit, would occupy the solicitor a week to examine the deeds and documents, and carefully determine the nature of the evidence to be produced and the means by which it could be obtained, he was allowed only 13s. 4d. for instructions to commence the proceedings, and 13s. 4d. for preparing the summons, with the ordinary charge for attendances.

Under the former mode of procedure, the solicitor was remunerated for his extra trouble by his profit on abbreviating and copying the pleadings, preparing long statements of facts, and the service of a multitude of warrants, nearly the whole of which labour was done by the solicitor's clerks. Now, the solicitor not only loses all the advantage of the clerks' work, but has to bestow a larger share than formerly of his own personal exertions. His time, therefore, is more occupied; he must bestow personally a greater share of attention, and yet is remunerated at a less rate than he was previously allowed. According to the former practice, the small fee for the time occupied in preparing instructions for counsel was, in ordinary cases, compensated by the charge for drawing the pleadings, but now, in a large class of cases, the pleadings are altogether dispensed with.

The evil of the old practice was, that it enabled the unscrupulous and the unskilful to obtain a higher rate of payment than the conscientious and experienced practitioner, and it was not in the power of the Taxing Master to diminish the charges of the one, or do justice by increasing the other. The New Order, so far as it extends, will enable the Judge to reward integrity, skill, and diligence. It is a step in the right direction, which, we trust, will be followed in other departments of equity practice and proceeding, whereby the heavy losses which the practitioners have sustained by the recent changes may be ultimately made up.

It is admitted by the most vehement Law Reformers that the emoluments of the Profession were not too high when the costs were regulated by the length of written papers, and now that Bills in Chancery are printed and their length so much curtailed, it will scarcely be worth while to undertake the conduct of Chancery suits, unless an increased scale of remuneration be established. Whether this can be effected without the introduction of the Scottish system of *ad valorem* charges, and in cer-

tain cases by the allowance of interest, remains to be ascertained; but it seems clear that an extensive improvement can no longer be delayed.

## BILLS OF EXCHANGE BILLS.

### REASONS AGAINST BOTH BILLS.

THAT bills of exchange have been found by long experience to be the most convenient mode of acknowledging debts and fixing a time for the payment of them, whilst they constitute an indispensable proportion of the circulating medium of the country.

That by the passing of the bills in question, or either of them, nearly the whole of the trade of the kingdom now carried on by means of bills of exchange will be extensively diminished.

That if the principle of not allowing a debtor to defend proceedings which may be taken against him, unless he can at the outset show a good defence on the merits, be admitted or established, it ought not to be applicable solely to bills of exchange or promissory notes, but to all debts and claims whatever.

That no sufficient reason has been shown for placing the law relating to the recovery of debts on bills of exchange on a different footing to other simple contract debts.

That Lord Brougham's Bill will create great difficulty in cases of bills of exchange or promissory notes, payable in towns or places where there are no notaries, inasmuch as the Bill provides no remedy for such cases, which will be very frequent, because there are no notaries in the majority of towns in this kingdom, but only in a few of the larger towns and cities, and, that therefore the holders of bills or notes will in such cases be undeservedly subjected to great risk and perplexity.

That the revenue now arising from the stamps used on bills of exchange will be seriously decreased, inasmuch as the use of them for commercial purposes will be almost annihilated.

That the disuse of bills of exchange as a circulating medium will render it necessary to have a very much larger amount of metallic currency in circulation, thus rendering money dear, and partially destroying the effect of the late Legislative enactment, repealing the Usury Laws.

That the passing of either of the Bills will practically give to the holder of a dishonoured bill or note, a preference over all other creditors, inasmuch as he will, by either of the proposed new modes of procedure, be enabled to take the debtor's effects in execution at the expiration of six or eight days; whereas, another creditor, not being the holder of a dishonoured bill, or note (though he may, in the usual course of business, have given exactly the same period of credit as the creditor holding a bill or note), will be left to his present remedy, of summoning the debtor to the Court of Bankruptcy, by which process the debtor has

seven days to appear and admit the debt, and seven days more to arrange with or pay the creditor, by whom he has been summoned; thus precluding the less favoured creditor from making his remedy (summary though it be) available in less than 15 days. That either of the proposed Bills will therefore create great facility for collusion between debtors and creditors, and render nugatory the aim and intent of the late enactments respecting bankruptcy, namely, an equitable division of assets amongst the whole body of creditors.

## NOTICES OF NEW BOOKS.

*A Digest of County Court Cases decided in the Superior Courts on Motion or on Appeal.* By SIR GEORGE STEPHEN, Barrister-at-Law. Crockford, 1855, pp. 214.

In the preface to this volume it is stated to be the object of the author, in adopting the somewhat novel form of compilation which marks the work, to reduce the size of the volume and save expense, and yet to enable the reader to refer, with facility, to cases where he can recollect any point involved in them. It will not fail to be noticed that some of the analytical titles under which the cases are classed are peculiar, but it appeared objectionable to substitute for them others of a more technical character, because any variation of the titles used in the reports from which this digest is compiled, might perplex the reader in referring to those reports.

The digest is, for the most part, confined to cases involving the practice of the County Courts, or points of law peculiar to their jurisdiction. Two or three appeals on questions of general law have inadvertently been inserted, but this not being discovered till after the work had gone to press, it was too late to expunge them.

The important case of *The Queen v. Marshall*, Judge of the County Court at Wakefield, was not decided in time for insertion in the Supplement. The Queen's Bench had in a former term granted a rule nisi for a criminal information against Mr. Marshall, on the application of Mr. Shaw, a barrister, for having excluded him from practising in the County Court at Wakefield, because he refused to answer a question put to him by the Judge in Court, whether he was the author of a report that had been published in a local newspaper, purporting to be a report of certain proceedings in the County Court.

The Queen's Bench discharged the rule, but without costs; intimating a strong opi-

nion on the conduct of the Judge, but declining to grant the information because Mr. Shaw had, in the first instance, applied to the Chancellor to remove the defendant, which application had been refused. It did not appear on what grounds the Chancellor had refused inquiry.

The Cases are arranged for convenient reference in the alphabetical order of the subjects decided. The most important are—Action; Agreement; Appeal; Commitment; Costs; Court; Evidence; Interpleader; Jurisdiction; Prohibition; Suggestion; &c.

As an example of the utility of the work and the method in which the learned counsel has treated the subject, we extract the following passages on the interesting topic of *Costs* :—

"Action, application to Court, Practice, *Levi v. McKee*, 22 L.J. 311, Q.B.

"In any action in the Superior Courts in which the plaintiff shall *prima facie* be disentitled to costs by reason of the 11th section of the 13 & 14 Vict. c. 61, if there be facts which would take the case out of the prohibition of that section, *semble* that the Master could not take notice of those circumstances, but that application should be made to the Court or a Judge under the 15 & 16 Vict. c. 54, s. 4, for an order directing that the plaintiff shall recover his costs before the plaintiff applies to the Master to tax them.

"Action on judgment, false plea of *nil tiel record*, construction of 9 & 10 Vict. c. 95, s. 129—43 Geo. 3, c. 46, s. 4. *Stater v. Mackay*, 1 C. C. C. pt. 6, p. 346; 19 L. J. C. P. 88; 13 Jur. 1091.

"November 26, 1849.—C. P.

"An action was brought in a Superior Court for 15*l.* 3*s.* 6*d.*, and the defendant allowed judgment to go by default. The plaintiff then sued on the judgment for the debt and costs, (exceeding in all 20*l.*) for the purpose of obtaining execution against the defendant's person. To this action there was a false plea of *nil tiel record*.

"Held, that in such a case the Court will exercise its discretion under 43 Geo. 3, c. 46, in favour of the plaintiff.

"Held, also, that the 129th section of 9 & 10 Vict. c. 95, does not apply to cases of judgment by default.

"Affidavit, construction of, 13 & 14 Vict. c. 61, ss. 11, 13. *Power v. Jones*, 1 C. C. C. p. 422.

"January 24th and 31st, and February 7th, 1851.—Es.

"In an action of debt in a Superior Court, the defendant paid into Court the sum of 12*l.* 13*s.* 3*d.*, and the plaintiff took out that sum in satisfaction of his claim, and entered a *nolle prosequi* as to the residue of the causes

of action; he then applied to a Judge at Chambers, under the 13 & 14 Vict. c. 61, and obtained an order for costs on the statement of the attorney's clerk, unsupported by affidavit. On an application to the Court for a rule to rescind such order, it not appearing by the affidavits that any objection was made to the Judge at Chambers entertaining the case, the Court rescinded the rule.

"A rule having been subsequently granted on amended affidavits,

"Held, that the 13th section of the County Court Extension Act, which gives power to a Judge to make an order for the plaintiff to have his costs in certain cases, was not applicable to the above case; but that the plaintiff was entitled to his costs under Reg. Gen. Trin. Term, 1 Vict.

"Appeal from Judge at Chambers.—Laches. *Meredith v. Gittins*, 19 L. T. 59 Q. B.

"Q. B.—April 15th, 1852.

"Where an application for costs under section 13 of 13 & 14 Vict. c. 61, has been refused by a Judge at Chambers, a subsequent application to the Court is in the nature of an appeal, and must be made within a reasonable time. The Judge having dismissed the summons in June, application to the Court in January held too late.

"*Semble*, it ought to be made not later than the following Term.

"Appeal, plaintiff's right to be nonsuited. *Robinson v. Lawrence*, 21 L. J. Ex. 36, 2 C. C. C. pt. 9, p. 538.

"1851, December 1.—Es.

"In an action in a County Court, the plaintiff retains the common law privilege of electing to be nonsuited at any time before the Judge gives his verdict.

"In appeals from County Courts brought in the Court of Exchequer, the successful party in the appeal will, as a general rule, have costs.

"Arbitrators, money had and received, excessive demand, payment. *Fernley v. Branson*, 1 C. C. C., pt. 7, p. 460.

"February 17, 1851.—Q. B.—On appeal from the Manchester County Court.

"A lay arbitrator, under a submission which provided that the costs of the submission and award should be in the discretion of the arbitrator, awarded to himself an excessive amount of remuneration. The plaintiff was compelled to pay that sum in order to get the award. The amount having been reduced by the Master upon taxation.

"Held; that the arbitrator could not by his award conclusively fix the amount of costs. And, further, that the plaintiff might recover the excess beyond the amount of fair remuneration in an action against the arbitrator for money had and received to him (the plaintiff's) use.

"As between attorney and client, attorney's



fees. *Esparte Clipperton, re Green*, 1 C. C. pt. 3, p. 136.

"*Thursday, May 11th, 1848.—Q. B.*

"The 91st section of the County Courts' Act of 9 & 10 Vict. c. 95, limiting the fee of an attorney for appearing or acting in the said Court, extends equally to the costs between attorney and client, and also to all matters done by the attorney in relation to the suit previously to the hearing.

"As between attorney and client, construction of 9 & 10 Vict. c. 95, s. 91. *Esparte Keighley, re Keighley v. Goodman*, 1 C. C. C., pt. 5, p. 284.

"*Trinity Term, 1849, and Hilary Term, 1850.—C. B.*

"Section 91 of 9 & 10 Vict. c. 25, provides that no attorney shall be entitled to have or recover therefore any sum of money, unless the debt or damage claimed shall be more than forty shillings, or to have or recover more than ten shillings for fees and costs, unless the debt or damage claimed shall be more than five pounds, or more than fifteen shillings in any case within the summary jurisdiction given by this Act."

"*Held, 1st.*—That the above provisions apply only to business done in Court.

"*Held, 2nd.*—That they do not abolish the ordinary distinction between the costs to be allowed between party and party, and the remuneration that an attorney is entitled to from his client.

"*Held 3rd.*—That an attorney is entitled to recover from his client for work done out of Court, in a suit in the County Court, a reasonable remuneration beyond what is allowed by the above section.

"Attorney, privilege. *Jones v. Brown*, 1 C. C., p. 102.

"*Easter Term, 1848.—Ex.*

"An attorney is still privileged to sue in a Superior Court for debts and demands within the jurisdiction of the County Court, notwithstanding the provisions of the 67th and 129th sections of the County Court Act (confirming the decision of the Court of Queen's Bench in the case of *Lewis v. Hance*, p. 19.)

"A rule to deprive an attorney plaintiff of costs, who had sued in the Superior Court upon a cause of action within the jurisdiction of the County Court, will be discharged with costs.

"County Courts' Act. *Parker v. Crouch*, 1 C. C. C., pt. 1, p. 42.

"*Michaelmas Term, 1847.—Ex.*

"Until a Court was established under the County Courts' Act, so that a plaintiff might have been entered therein at the time of action brought, sec. 129, which deprives the plaintiff of costs in any action "for which a plaintiff might have been entered under this Act," did not apply.

"Therefore, where a writ in an action of

trespass was issued on the 25th March, 1847, and plaintiff recovered 40s. damages, and the County Court for the district was not actually established until after the 25th, although it had been directed to be formed by the order in Council on the 11th March.

"*Held*, that the right to sue in the Superior Court was not affected by the terms of the 129th section of Statute 9 & 10 Vict. c. 95.

"Death of one of two defendants, affidavit. *Lewis v. Farrant*, 1 C. C. C., pt. 5, p. 301.

"*Easter Term, 1850.—C. B.*

"Where the death of one of the defendants is suggested on the record of a writ of trial, the affidavit to deprive the plaintiff of costs is properly entitled to a suit by the plaintiff against the surviving defendant only.

"But the affidavit should negative that both defendants were not persons within the 9 & 10 Vict. c. 95, s. 128, so as not to give concurrent jurisdiction to the Superior Courts. And the affidavit is not sufficient if it merely negatives the fact of the surviving defendant being within section 128.

"Laches in application. *Reid v. Gardiner*, 17 Jur. 442 Exch.

"*Semble*, that an application for costs under the 15 & 16 Vict. c. 54, s. 4, may be made after any lapse of time. A cause in which the Superior Courts and a County Court had concurrent jurisdiction was brought in the former, and tried in February, 1852, the defendant being then absent from England on a voyage to Australia. The plaintiff having obtained a verdict and accepted his damages, applied for costs under that Statute in January, 1853; *held* not too late. (*Orchard v. Mossy*, 7 Exch. Rep. 387, *in notis*, distinguished.)

"No time is fixed within which an application for costs is to be made under the 15 & 16 Vict. c. 54, s. 4, in cases where the County Courts and the Superior Courts have concurrent jurisdiction. Judgment was obtained by the plaintiff in February, 1852, and the damages paid, but no application for costs was made until January, 1852, the defendant having been out of the jurisdiction during that time. *Held*, that the plaintiff was entitled to his costs.

"Practice. *Latreille v. Barrett*, 14 Jur. 336 (Exch.)

"*Eschequer, April 18, 1850.*

"Where a plaintiff obtained a verdict in a Superior Court for a sum of money for which he ought to have sued in a County Court, and signs judgment for the amount recovered and his costs, the defendant should move to set aside the judgment altogether, and not so much as relates to the costs.

"Preliminary business. *Re Toby*, 1 C. C. p. 243.

"*Trinity Term, 1850.—Q. B.*

"The 91st section of 9 & 10 Vict. c. 95, limiting the fees of an attorney for 'appearing

or acting' on behalf of any person in the County Court, applies only to the appearing and acting in Court, and not to matters done by the attorney in relation to the suit previously to the hearing."

## LEGAL STATISTICS.

**NUMBER OF ACTS OF PARLIAMENT.**

FROM a return to the House of Commons ordered to be printed 9th February last, it appears that—

|   |              |
|---|--------------|
| The number of public Acts since the year 1800, which were passed in the 21 remaining sessions of the reign of Geo. 3, was . | 2,690        |
| And of local and personal Acts . . .  | 2,877        |
| Of private Acts, printed . . .  | 244          |
| <u>                    </u> not printed . . .   | 1,468        |
| <b>Total . . .</b>  | <b>7,279</b> |

|   |              |
|---|--------------|
| The number of public Acts during the 11 sessions of Geo. 4, was | 1,105        |
| And of local Acts   | 1,470        |
| Of private Acts, printed  | 511          |
| not printed   | 156          |
| <b>Total</b>  | <b>3,242</b> |

|   |              |
|---|--------------|
| The number of public Acts during the 8 sessions of Wm. 4, was | 708          |
| And of local Acts   | 860          |
| Of private Acts, printed                                      | 234          |
| not printed   | 107          |
| <b>Total</b>  | <b>1,909</b> |

|  |       |
|--|-------|
| The number of public Acts during the 17 sessions of Victoria, has been | 1,915 |
| And of local Acts  | 2,821 |
| Of private Acts, printed   | 557   |
| not printed  | 154   |
| Total  | 5,447 |

**OBJECTIONS TO THE PUBLICATION  
OF LISTS OF  
WARRANTS OF ATTORNEY, BILLS  
OF SALE, &c.**

By means of the law of arrest on mesne process, as it existed a few years ago, creditors were possessed of enormous power, which they were able to put in force by merely making an affidavit of debt, without giving any notice whatever.

The power alluded to was often wielded in the most unscrupulous manner, until at last the indignation of the public was fairly roused, and an Act was passed abolishing the right, except in the cases of debtors who were about to leave the country, and then only by order of a Judge upon an application supported by affidavit, and showing special circumstances.

For some time after the abolition of imprisonment for debt upon meane process the Legislature appeared to side more with the debtors than the creditors, until it became apparent, after the new law had been a short time in operation, that the power in the hands of creditors was insufficient to protect them from being robbed by designing and dishonest traders. In fact, this branch of law appears to be always carried to one extreme or the other: there appears to be a sort of natural conflict perpetually raging between debtors and creditors, and no law between them has ever yet been, or, perhaps, can be perfect. Of late years, however, the law has been so altered in favour of creditors, that they are now possessed of almost absolute power over their debtors, so much so as to render it very hazardous for a tradesman to attempt to carry on business, except with ready money.

Amongst other powers lately given to creditors, was one (at the suggestion, I believe, of a committee of some of the highest firms in London) that all "judges' orders" should, to be binding in the event of bankruptcy, be filed. A similar plan was previously in operation with respect to warrants of attorney and cognovits, but *they* were rarely given, because the Profession almost invariably advised their clients to consent to judges' orders instead, as the latter were not required to be registered until the passing of the Bankrupt Law Consolidation Act. Now, the simple fact of registering anything, whether warrant of attorney, cognovit, or judges' order, or any instrument of a similar nature, would not perhaps be at all objectionable (rather the contrary), but it has lately become the practice to compile lists of these documents for circulation amongst the wholesale houses and large traders. These lists were first commenced, it seems, at the time when warrants of attorney and cognovits only were filed; and they were circulated "privately and confidentially" amongst all persons who chose to pay for them. Well do I remember being shown some of these lists "confidentially," a few years ago, by a gentleman connected with a wholesale house in the city, which had then recently commenced subscribing for them. When they were produced, the names of some retail traders in the country, who were customers of the house, were pointed out, and I was informed that instructions had been sent to the travellers for the firm to close their accounts immediately, and all because they had signed a warrant of attorney or cognovit, given perhaps from the best of motives and without a thought of the security being used unfairly against other creditors. In the instances I have mentioned, who can doubt that ruin must have followed. The accounts closed, immediate payment required, and credit stopped—stopped too, not only at the particular house alluded to, but most likely by all others in the trade. All this was done, be it remembered, without the knowledge of the unfortunate debtors, who probably remain to this day, totally ignorant of the cause of their al-

tored position, though the effect must have been painfully apparent. The compiling and circulating of these lists was commenced about the same time, or soon afterwards, by another office of a similar character, then by one or two of the principle trade protection societies, and afterwards by others, until at last the system has become general amongst all those societies which are sufficiently large to bear the expense.

The law has thus gradually made it compulsory to register, first, warrants of attorney, then *negotiorum*, then Judges' orders (the use of each of which in turn has been abandoned by the Profession, because of the injurious effect to their clients of registering), and in the last session of Parliament it was made compulsory to register *bills of sale* also; attorneys consequently now often advise their clients to consent to an immediate judgment, and sometimes to place themselves entirely at the mercy of their creditors, rather than incur the fearful penalty of having their names put into what can only be deemed a "Black List," where the fact is recorded, where it remains unalterable, without any explanation of attendant circumstances, and to be used as a reference for many years, long after the debt has been satisfied.

The law having thus commenced what I cannot but designate as a most mischievous proceeding (though never, I venture to assert, with the view of its being made use of in the manner I have described, but merely as a means of preventing secret preferences), the various offices and societies have, one after another gradually encroached upon the license which they have assumed, until at last reserve is thrown aside, and the lists are now publicly printed, and sent to any person who chooses to pay a few shillings for them. One of these—the last—I have just seen, and there I find the names of M.P.'s, baronets, barristers, and others (many of whom will be rather astonished to find their transactions made so public), mixed up with retail traders, who had much better have signed a declaration of insolvency at once, than have placed themselves in the position of having their names exposed as defaulters from one end of the kingdom to the other, with no other prospect before them than that of a hopeless and endless struggle to obtain a livelihood, unless they have the means, or, alas, so few have, of purchasing all their commodities for cash.

I have before stated that attorneys often advise their clients now not to sign either of the various documents required by law to be registered, but rather to submit to immediate judgment. This will in a short time have the effect of greatly decreasing the number of these documents, and then it is not unlikely that an attempt will be made to carry the system out by another mode; but this I will not dilate upon by anticipation, as I hope that Parliament will soon provide a remedy for the wrong it has unwittingly, but indirectly, created, and by means of which it has given to creditors a

power over debtors of a most atrocious character, totally opposed to every principle of justice and honourable feeling.

When the system of compiling and circulating these lists was first introduced, some slight check existed in the shape of fear of actions for libel, which I have no doubt might be sustained, particularly in cases where special damage could be proved. But the offices and societies have now grown bold by practice, and from not having been interfered with, all fear is cast aside, and every man, honest or dishonest, who has ventured to give a security required by law to be registered, is held up to all persons, but to wholesale traders in particular, as one to whom credit cannot safely be given; and that too without any statement of the circumstances under which he has given the security; thus leaving the poor but possibly honest tradesman the miserable and unsatisfactory remedy of an action for libel—an expensive and heart-breaking process to any person, but most so to him whose fortunes and prospects may by the operation of the system which I have attempted to describe, be stated in one word—ruin. W.

## POINTS IN EQUITY PRACTICE.

### USE OF NEXT FRIEND ON DEEDS DEPOSITED FOR INSPECTION.

In a suit instituted by a next friend on behalf of an infant, the defendant deposited certain deeds and papers under the common order for inspection. The infant had since attained his age of 21 and repudiated the suit.

On a motion for the delivery out of Court of the deeds and papers, the *Vice-Chancellor Kindersley* said—"The next friend wants to have his costs; the question is, how does he make out his right to retain the deeds in Court for the purpose of protecting his claim for costs? Now, over and over again, I have found a contention arise out of the distinction between an order for production, and an order for deposit. There is no similarity between them; the order for deposit is made when it is necessary to secure the deeds for the party entitled to them. This is not an order for deposit. It is a mere order for production of the deeds for the purpose of discovery, and the defendant is ordered for that purpose to place them in the hands of the clerk of records and writs; when that purpose is satisfied, when the discovery has been obtained, the party who left the deeds has a right to have them back, subject to the discretion of the Court to retain them if it sees that they may be further required in course of the suit, or at the hearing; for that the Court

will provide; but that is not a production for the purpose of deposit with reference to the interest of the parties. If all these deeds had belonged clearly to the defendant, still, if they related to the matters in issue, he might have been ordered to produce them for the purpose of inspection. But when the discovery has been obtained, when the purpose of production is answered, then the right of the defendant is to have them out again. The order here is the common order for production for discovery only, and not for the deposit of the deeds for security; and, on that footing, it would be the clear right of the party who has produced them to have them out. But it is said that the plaintiff is interested in the documents not being delivered out; not because they were his, and ought to be delivered to him, but on behalf of the next friend as against the infant, in order that the deeds may remain until a sufficient security is shown for the payment of the next friend's costs; but that assumes that there has been a declaration of the rights of the parties to the deeds. There is no such declaration, no decree or declaration that they belong at all to the plaintiff.

The real attempt is to treat this as a question whether the next friend has a lien on the deeds. Now it is obvious he has none; he can have no lien on documents merely brought in to enable the plaintiff to obtain inspection of them for discovery.

If they had been deposited for security, that could only be ordered after a determination that, though they were in the hands of one party, some other party was entitled to them or to an interest in them; then the Court would see that they were secured as against the party possessing them. But when they are brought in for discovery, they are not to be retained for any other purpose.

It is really immaterial whether the deeds do or do not belong to the plaintiff; but at any rate it is not determined that they do. I do not mean to say at all that the next friend may not be entitled to his costs, but he has no right to say he has a lien on these deeds for that purpose." *Dunn v. Dunn*, 3 Drewry, 17.

#### SALARIES OF THE COUNTY COURT JUDGES.

A REMARKABLE correspondence has been elicited, under an order of the House of Lords, relating to the increase of the salaries of the Judges of the County Courts.

By a Treasury minute, of 23rd August, 1853, it is stated that—

"My lords have before them letters from certain of the County Court Judges, setting forth their claims to be paid the maximum salary allowed by the Act 15 & 16 Vict. c. 54.

"My lords have before them a statement compiled by their directions, showing—

"1st. The number of cases tried in 1852 in each circuit.

"2nd. The number of days each Judge sat in 1852.

"3rd. The amount of Judge's fees produced in each circuit.

"4th. The number of miles each Judge must travel taking a circuit of his Courts, including extra journeys to Courts requiring to be held oftener than once a month. The actual miles travelled by the Judges are frequently more than here stated, according as they return after one or more Courts or make a circuit.

"5th. The standing of each circuit, according to the number of causes tried, sittings, fees, and miles travelled.

"The circuits being arranged in 1, 2, 3, and 4, according to the highest amounts.

"In considering the claims put forth, my lords find the greatest difficulty in ascertaining the relative amount of labour performed by the Judges.

"It is obviously improper to take the amount of Judge's fees produced in any one circuit as the sole guide to the amount of labour imposed upon its Judge, as it appears by the statement attached to this minute, that in circuits comprising many Courts, in which the amount of fees produced is very small, the number of days the Judge is required by the Act to sit considerably exceeds the number which the Judges of most of the circuits in which the fees are large do sit.

"For the same reason the number of causes tried cannot be considered as a criterion of the labour which falls on the Judge, as the amount of labour required in the country districts in travelling from Court to Court must be set against the greater number of causes tried in the metropolitan and other urban circuits.

"It is, therefore, only by considering the amount of the different labours peculiar to each circuit that the labour of the Judge can be estimated, and when such an estimate of each circuit is made, the difficulty remains of determining which of the labours required of the Judges should be considered as the most laborious, so as to be able fairly to decide in which of the different circuits the duties are the heaviest.

"Under these circumstances, and having reference to the recent period at which by an Act of the Legislature the salaries of the Judges of these Courts were increased from 1,000*l.* to 1,200*l.* per annum each, my lords consider that it would be advisable to consult the Commissioners recently appointed by her Majesty

to inquire into the practice and fees of these Courts to consider the claims of the different circuits for a larger salary to be attached to the office of Judge than the one now paid to it, viz., 1,200*l.* per annum.

"Write accordingly to the Commissioners of Inquiry into the Practice and Fees of the County Courts, and refer these papers and applications to them for their consideration and report.

"Inform the Judges of the Courts whose letters have been considered, of the course adopted by their lordships, and that no decision will therefore be come to until their report has been received."

Then follows a letter from the Home Office of 17th October, in which an application from Mr. Serjeant Jones for the maximum salary of 1,500*l.* is set forth, as contained in the following letter of the learned Serjeant, and which we deem it necessary to submit to our readers. It is addressed to Lord Palmerston:—

"Encouraged by two speeches reported to have been delivered by your lordship at Perth on the 26th, and at Glasgow on the 27th ult., in which you emphatically invited all who have any representations to make, whether of existing evils or of suggested improvements, to communicate with that branch of the Government to which they relate, I offer no apology for bringing under your lordship's notice a subject connected with the administration of justice over which as Secretary of State for the Home Department your lordship at present presides.

"The subject to which I beg to direct your lordship's attention is the inadequacy of the salaries paid to some at least of the County Court Judges, and to the treatment which those functionaries have met with from the Government.

"In stating my case thus broadly, I wish to explain that I do not desire to become the advocate of others, that I write for myself alone, and wherever I may enter on the system generally, it will be only so far as it applies to my individual case, or as it may be necessary to elucidate the same, and that throughout I will use no reserve, but simply endeavour to place intelligibly before your lordship those grievances for which, in common with others, I have hitherto sought redress in vain, and which therefore keep alive a strong feeling of dissatisfaction, increasing in a ratio corresponding with their continuance and growth, a state of mind all must admit to be most undesirable for those engaged in the discharge of judicial duties."

The learned Serjeant then sets forth the opposition of the Home Secretary and the Attorney-General to this small debt scheme, but it seems they yielded to the interested clamour of its supporters. He says—

"It is important to bear in mind that in

1846, when the first County Court Act was carried through Parliament, the two members of the Government most connected with the administration of justice next to the Lord Chancellor, namely, the Home Secretary and the Attorney-General, were opposed to the establishment of local Courts; it is firmly believed that the active hostility of those officers has not only encouraged the invidious opposition which has been vainly offered to the system, but that the prejudices engendered during their tenure of office have never wholly ceased to operate to the disadvantage of all connected with those otherwise popular tribunals. Whether this impression be well founded or not, certain it is that the Government have from first to last placed themselves in a position antagonistic, as it were, to the Judges and other officers of the County Courts, which, to adopt the graphic language of a living author, are 'excluded from their natural and proper place, as a part of the national institutions of the country,—left to stand or fall by a self-supporting agency, like some religious sect that is permitted, not approved, coldly tolerated, but not assisted or endowed by the State.'

"By the first County Court Act it is enacted that there shall be payable on every proceeding in the Courts holden under that Act, to the Judges, &c., such fees as are set down in the schedule (D.) to this Act annexed, &c.

"By the 39th section it is enacted, that it shall be lawful for her Majesty, with the advice of the Privy Council, to order that the Judges, &c., or any of them, shall be paid by salaries instead of fees, &c.

"And by 40th section, it is enacted that the greatest salary to be received in any case shall be 1,200*l.* a year by a Judge, &c.

"In February, 1847, when this Act came into operation, it was impossible to ascertain what amount of fees might be collected on the several circuits; for, except where Small Debt Courts had previously existed, there were no elements on which to found a calculation, and notwithstanding the country had for many years called loudly for the creation of local tribunals, and its demands were recognised in the appointment of sixty Judges to preside over as many circuits, consisting of not less than 491, several distinct Courts, the Government of that day withheld all encouragement from the new system, and declined to incur the responsibility of placing the Judges on salaries, but sent them forth as adventurers, armed only with the Act of Parliament, to commence their sittings when and how they pleased, privileged to collect the fees sanctioned by the schedule, from such suitors as might resort to their untried Courts in the teeth of the opposition offered by parties interested in the maintenance of those abuses that had long rendered the administration of the law a blot on the national character, compelled to pay their own travelling and other expenses, to find clerks and high bailiffs who might be willing and able to incur the responsibility of

engaging all the assistants necessary to set the machine in motion, with no certainty of remuneration even for themselves. Thus the entire risk of the experiment and the chances of failure were thrown on the Judges, who were left at liberty to follow their professions concurrently with the discharge of their judicial functions; no stipulation was ever made that they should retire from practice, or devote their whole time to their Courts, although many from various motives were induced to do so."

The learned Serjeant then asserts that, notwithstanding all the disadvantages attending its introduction, the success of the measure was most signal, far surpassing the anticipations of its warmest supporters! and he states that—

"Unfavourably as the form in which the returns were framed in order fairly to represent the working of the Act, it still appears that the 'Judges' Fees' from the time the Act came into operation up to and inclusive of 30th November, 1847, only realised 82,652*l.* 14*s.* 5*d.*, while the total amount of money received under the authority of the Act during the last few months reached the astounding sum of 600,559*l.* 1*s.* 3*d.*; so widely, however, did the result differ, that the Parliamentary Returns disclose that while the fees received by one Judge who presided over a single Court amounted to 2,311*l.* 13*s.* 9*d.*, the aggregate collected by two others from 24 circuit towns was only 1,512*l.* 17*s.* 1*d.*"

We are then told that so soon as this encouraging result was ascertained, and the Treasury caught a glimpse of a large surplus beyond the utmost amount of salaries to which the Judges were then entitled by law, they gave notice that payment by fees would be abolished, and salaries substituted!—

"And in July, 1848, the Judges were informed that the amount had been fixed at one uniform rate of 1,000*l.* per annum, without reference to the extent or circumstances of the several districts, or to the amount of labour to be undergone. Respectful remonstrances were made on the part of the Judges to the Government, that the sum specified in the Act 1,200*l.*, had not been awarded. The Government were reminded that in Acts of Parliament, creating offices and enabling the Crown to fix salaries, the invariable practice had been to authorise the Crown to grant a sum limited to the amount at which the Legislature had estimated the value of the services, thereby avoiding the indecorum of binding the Crown to a precise sum, and enabling the Sovereign to stand in the position of a party showing favour by electing to bestow upon the appointee the largest authorised amount, and that theretofore the amount named had been uniformly given; and the correspondence between Sir G. Grey

and Mr. Serjeant Manning, on behalf of the Judges, was closed with a letter from Mr. Waddington, dated the 31st July, 1848, stating that the subject had been very fully considered, and that it had not been thought advisable to fix the salaries in the first instance at the maximum rate allowed by the Act of Parliament; but, if other duties were thereafter imposed upon the Judges which might occupy a larger portion of their time, and interfere to a greater degree with the private practice which many of them continued, the question of an increase might be considered.

"With this exception (we are informed that) no communication was ever made by the Government to the Judges as to either the amount of salary, or their bestowing their whole time on their judicial duties. Mr. Waddington's letter, however, distinctly recognised their right to practise, and their claim to compensation, should that right be interfered with.

"Not long after the date of Mr. Waddington's letter, the whole administration of the Insolvent Laws beyond the Metropolitan District, was transferred from the Commissioners of the Insolvent Court to the Judges of the County Courts in the country, without any increase of salary to the latter, or any diminution of the salary paid to the Commissioners—then 50 per cent. higher than that of the Judges. A striking illustration of the treatment experienced by the County Court Judges may be here incidentally noticed, viz., the travelling allowance to the Commissioners when on circuit had been two guineas a day, and 2*s.* a mile for posting, the Treasury, however, reduced the scale for the Judges to 15*s.* a day, or 7*s.* 6*d.* when not out the night, 3*d.* a mile for railroads, and 1*s.* 6*d.* for posting,—the uniform allowance to revising barristers, before they were remunerated by a single fee, having been a guinea a day, and 2*s.* a mile."

It is then asserted, that by 1850, the popularity of the County Courts had become so great that the country insisted<sup>1</sup> on a repeal of the limitation which hitherto had restricted their usefulness, and the Bill for extending the jurisdiction from 20*l.* to 50*l.*, and creating an unlimited one with the consent of parties, was carried in the House of Commons against the Government by a majority of 77.

"The feeling of hostility displayed (it is said) on that occasion by the Home Secretary rendered it futile to make any efforts to obtain redress so long as the seals of that department remained in the same hands; accordingly, from 1848, with the last additional duties, and the larger demand on their time,

<sup>1</sup> It has been confidently asserted on the other hand, that the petitions for the extension of the jurisdiction from "small debts" to larger, were promoted by interested persons, and not the voluntary act of the public.—Ed.

occasioned by the heavier causes, and the more frequent attendance of counsel and attorneys since 1850, the Judges continued to discharge in silent dissatisfaction their onerous duties, their hope being that a change in the Ministry might lead to a more equitable adjustment of their claims.

"By the last County Court Act it is enacted, that the greatest salary to be received by a County Court Judge shall be 1,500*l.*, but in no case shall such Judge be paid a less salary than 1,200*l.*

"This clause was founded on the injustice with which the Judges had been treated, and was framed expressly for their future protection. It will be perceived that the discretionary power of fixing the amount of salaries vested in the Government by the previous Act was thus so far controlled that the sum (1,200*l.*) named in the first Act as the maximum to be received by a Judge was then declared to be minimum, which should be paid to any, thereby securing to all that remuneration for the additional duties imposed on them since 1848, which the Under Secretary's letter had given them previously every right to expect, but which nevertheless had been withheld."

The *Serjeant* then contends that the original compact between the Government and the Judges was entirely changed by this Statute, inasmuch as it excluded them from private practice after the 30th September, 1852, thus inflicting on some serious pecuniary loss, and depriving them of those hopes inseparable from practice at the Bar; the only certain compensation offered by the Act, as well for the vast additional labours resulting from the administration of the Insolvent Laws and the extension of the jurisdiction, as for the extinguishment of those professional advantages, being the before-mentioned ratification of the pre-existing right in all to 1,200*l.* per annum, and the extension for some of the maximum rate of salary to 1,500*l.*; and he thus continues:—

"Although the extent of the business of my Court appeared to render my title to the highest salary positive, experience warned me that it was not indefeasible; accordingly, on the 16th Aug. 1852, I laid before the Lords of the Treasury a series of arguments which seemed to justify the expectation that even their lordships would consider me entitled to the full salary of 1,500*l.*

"Scarcely, however, had I reconciled myself to this exchange of a certainty for an uncertainty, ere I received a circular from the Treasury, apprising me 'that it was not at present the intention of the Government to increase the salaries of any of the Judges of the County Courts above the minimum amount sanctioned by the Statute.'

"I felt, after calm and mature reflection,

that it was imperatively due, as well to myself as to the office I fill, and to those who may succeed me in that office, respectfully to appeal against a decision that offered to a public servant a salary so wholly inadequate to the labours imposed on him, and so much below what Parliament evidently intended should be paid to him.

"I therefore addressed their lordships, recalling their attention to what I had urged in my previous communication, in which I had shown that the Metropolitan Judges occupy a different and more prominent position than those in the country—a distinction recognised by the Legislature, and existing between the London and the country Courts of Bankruptcy. That the business of my Court was, with one occasional exception, the heaviest in England. That fees levied in my name from the suits in my district had been annually much more than double the sum allotted to me; that I was deprived of my private practice, which had theretofore, in some measure made up for the inadequacy of my salary; that while that inadequacy caused me to enter upon my daily duties with the undesirable feeling that injustice was done me, a grave cause of complaint was furnished to the suitors in being compelled to pay higher fees than were required to support the tribunal, and that either they were overtaxed or the Judge underpaid. I solicited their lordships' attention to the annual returns made to Parliament, of the relative duties discharged by the several Judges throughout England and Wales, and to the amount of fees received in the name of the Judges on each Circuit, ascertaining as they do a test of the extent of their several labours, and forming as they had done, the basis of the recent enactment; and I then appealed to their lordships' sense of justice, to say whether, when the Legislature had confided to the Government the duty of assessing the rate of salary to be paid to each Judge, that trust could be considered to be satisfactorily discharged, if the Judges of Circuit No. 43 (my own) and a few others, whose labours are more than threefold those of some, are suffered to be left merely in the receipt of the same remuneration which Parliament had deemed it but just to secure to those Judges whose labours are the lightest? and I submitted with much confidence, that the true construction of the 14th section of the last Act, vests in those Judges, whose duties are the heaviest, an equitable right to be paid 1,500*l.* a year, the duty of determining the number so entitled being imposed on their lordships, jointly with one of the Secretaries of State.

"On the 12th of January in the present year, after the accession to office of Lord Aberdeen's administration, I solicited the attention of the present Lords of the Treasury to the letters I had so addressed to their predecessors.

"Except from Lord Derby, to whom when first Lord of the Treasury, I wrote, and who

replied to my letter on the second day after its delivery, I have never been honoured by even a simple acknowledgment of the receipt of any communication I have addressed on this subject, either to the present or the late Government. A similar silence has been observed towards others of my brother Judges, and has been accepted by us as strong confirmation of the unanswerable nature of our remonstrances, and will afford, I hope, some justification for this intrusion on your lordship."

The letter then sets forth that the Judges of fourteen Circuits, with the heaviest business, concerned in a memorial to the Treasury, praying for the full amount of salary allowed by law, in which they set forth the increased duties cast upon them, the loss sustained by exclusion from practice, and the inadequacy of the salary fixed in 1846, when their duties were so much lighter, and no such restriction existed.

"We also directed their lordship's attention to what had taken place in Parliament on the subject, and showed, as well by those proceedings as by the terms of the Act itself, that it was never intended that the discretionary power vested in the Government should be suspended and become a dead letter. We further referred to certain legal appointments, the duties attached to which it would be invidious to compare with our own in importance, severity, or responsibility, though much more liberally rewarded; and showed that we sought to impose no burden on the public purse, or additional tax on the public purse, or additional tax on the suitors, but asked only for a larger portion of the fees earned by ourselves for the Treasury, in order to render our salaries less disproportionate to our enlarged duties, and more commensurate with the salaries paid by the State to other legal functionaries of inferior degree.

"This memorial, like the applications from individual Judges, received no answer, and we were about to avail ourselves of the services of certain distinguished members of each House of Parliament who have long advocated the Judges' claims, when we were relieved from a step repugnant to our feelings by an assurance given to two of our body by the present able Secretary of the Treasury, Mr. Wilson, that their lordships were prepared to direct the payment of the maximum salary to some of the Judges, a list of whom he stated was made out, and that he was only waiting for an opportunity to obtain your lordship's sanction, in order to carry the same into effect. That gentleman entered fully into the subject, pointing out the difficulties which had presented themselves, and satisfied the deputation that he had made himself master of it; and they left him assured that, so soon as the pressure of the Parliamentary business permitted, justice would at length be done some at least of the

Judges. All thoughts of ulterior proceedings were at once abandoned, and we patiently awaited a favourable communication from the Treasury.

"Our hopes, however, were again doomed to be disappointed; for so soon as Parliament was prorogued, a letter was received by one of the deputation from Mr. Wilson apprising us that the Lords of the Treasury had referred the whole subject of the salaries of the Judges of the County Courts to a Commission recently appointed for other purposes, and that until their report shall have been received, their lordships will not be in a situation to come to any decision on the prayer of our memorial of March last.

Against this extraordinary proceeding the memorialists have forwarded, through Mr. Serjeant Manning, a temperate but firm remonstrance, reminding their lordships that since the date of their memorial, and since the communication made by the secretary of the Treasury in person, the jurisdiction of the County Courts has again very considerably extended, and important additional duties have been once more imposed on the Judges by the "Charitable Trusts Act," the "Customs Consolidation Act," and the "Succession Duty Act,"—accessions of labour never contemplated when the salary now paid to all the Judges was fixed by Parliament as the minimum to be received by any.

"Protesting against the propriety of referring to a Commission so constituted as to render the task peculiarly invidious to some of its members, as a matter which the Legislature has confided to their lordships, in conjunction with another department of the Government, we have expressed a hope that after the loss sustained during the last five years from the resistance offered by the Government alone to claims founded on statute, sanctioned by public opinion, and advocated by the highest authorities in both Houses, their lordships will take into further consideration the prayer of our memorial, and decide at once on the case of the memorialists, or of such of them concerning whose claims they entertain no doubt.

"What effect this may produce remains to be seen; but, as the irresistible inference arising from Mr. Wilson's letter, after his previous explanation in person, is, that some obstacle to the scheme arranged by the Treasury has been raised by your lordships, it is with a view to remove any difficulty which may have occurred in obtaining your lordship's sanction for the proposed increase of the salary of some of the Judges, and to put your lordship into possession of all that has taken place with reference to the claims of those, the magnitude of whose business appears to all disinterested parties to give them an undoubted right, that I have



been thus minute, from a conviction that all that be necessary to secure your lordship's favourable decision is, that your lordship should be made conversant of the real facts.

"In providing that 'in no case shall any Judge be paid a less salary than 1,200*l*,' I submit that Parliament has emphatically declared the amount previously awarded by the Government, when no minimum existed, to have been even at that time inadequate, and that this security was essential for the protection of the Judges from a recurrence of the arbitrary treatment they had experienced; and in fixing 1,500*l*. as the highest salary to be received, it has declared not less plainly that some of the Judges were entitled to that amount, and has imposed on the Government the duty of drawing an equitable distinction between them, and of assessing salaries, bearing a due proportion to their relative labours.

"Now, looking at the very unequal amount of duties which devolve on the 60 Judges, as disclosed in the returns, it is manifest that in paying none more than 1,200*l*., if all are properly remunerated some must be very much overpaid—a proposition which no one has ventured to suggest; while, on the other hand, if none are more than properly paid, others must be very considerably underpaid, as your lordship will find from those returns, that the number of summonses issued from any Court in the years 1848, 49, 50, 51, was 57,190, and the fees collected in the Judge's name amounted to 9,362*l*. 15*s*. 10*d*., but that there are other circuits where the business and the Judges' fees have not averaged one-third of those amounts.

"The language then, I repeat, employed by the Legislature in the last Act, having reference to such a state of facts then before them, clearly indicates that in fixing a maximum as well as a minimum amount of salary, Parliament vested a right in some of the Judges to a higher rate than others; and I also submit, that although the Government may not have been prepared immediately on the passing of that Act to determine the precise numbers so entitled, and may therefore have some plea for the Circular of September, 1852, as a temporary arrangement, yet, so soon as they had had time to investigate the matter and arrive at the conclusion which they have intimated through official channels, that, although all the Judges were not entitled to an increase, some had undeniable claims, they were guilty of injustice to those so entitled, be they few or many, in withholding any longer from them that which the country had declared their services worthy of. Nay, I go further, and maintain that neither in law nor morals can the retention of the extra salary be justified, though there be but one solitary Judge to whom, in the exercise of an honest judgment, the Government might have decreed the higher rate.

"The only objection ever advanced against the immediate concession of that for which we have so long contended in vain is, that there exists a great difficulty in drawing a line be-

tween those who are admitted to be, and others who claim to be, but may not be, entitled to such increase.

"Premising that I have never encountered a difference of opinion among any free from prejudice, competent to form a judgment, and acquainted with the laborious services of the County Court Judges, that 1,500*l*. a year is no more than ought to be paid to all, and insufficient for some, I will, for argument sake, assume that many are amply paid with the minimum secured by statute, and I then respectfully ask your Lordship on what ground can the Government justly withhold the higher rate from those whose claims they are satisfied ought to be conceded? On what possible grounds can the dues of one man be kept back because it may not be certain whether others may not possess corresponding rights? Is it worthy, my lord, of any department of the Government to hesitate in doing a right to *A*., because in doing so offence might be given to *B*., or to permit any personal considerations whatever to interfere with the discharge of a public duty?

[*To be continued.*]

## STATE OF BUSINESS IN THE OFFICES OF THE MASTERS IN CHANCERY.

### *Master Sir George Rose :*

THE number of causes and matters originally referred to this office, in which reports have been made since the former return, and the inquiries referred disposed of, is . . . 23

The number transferred from the offices of Masters Kindersley, Farrer, Brougham, Senior, and Sir William Horne, and disposed of, is . . . 19

The number abandoned or settled between the parties, is . . . 4

There are 32 causes in which the reports are prepared, and which, when settled, will dispose of that number of cases, in addition to those before-mentioned. And 3 transferred from the offices of the late Masters since the former return.

### *Master Richards :*

The number of causes in which the general reports have been made and signed since the former return, is . . . 54  
of which 11 were not mentioned in the former returns.

The number of causes in which reports have been prepared and are partly settled, is . . . 20

The number of causes and matters which have been compromised or otherwise disposed of since such returns, is . . . 15

And the number of other causes in which accounts have to be taken and inquiries made and not included in the former returns, is . . . 5

There are now 89 causes remaining to be disposed of, and 22 matters under the Joint-Stock Companies' Winding-up Acts, and 110

causes in which receivers' accounts have to be passed, comprising a rental of upwards of 200,000*l.* per annum.

**Master Blunt :**

The number of causes reported on since last return in pursuance of order of 24th March, 1854, is . . . . . 56

Of these it appears that 13 were not included in the last return, but have been since transferred or referred on fresh inquiries, or the orders have been since brought in, and some were accidentally omitted.

The number of causes settled by order of Court, compromised by the parties, or otherwise disposed of, is . . . . . 16

The number of causes in which reports have been drawn, but not finally settled, is . . . . . 20

**Master Humphry :**

The number of cases in which general reports have been made since the former return of May 18, 1854, is . . . . . 42

And the number which has been since disposed of by compromise, arrangement, or by orders of Court, or by being abandoned by the parties, is . . . . . 29

In addition to the general reports, 80 separate reports have also been made in different suits.

The number of causes and matters now pending is as follows:—

|  |     |
|--|-----|
| Causes originally transferred to this office | 93  |
| Receivers' accounts . . . . .                | 28  |
| Winding-up cases . . . . .                   | 13  |
| Causes transferred from Master Kin-          |     |
| dersley . . . . .                            | 8   |
| Receivers' accounts . . . . .                | 2   |
| Winding-up case . . . . .                    | 1   |
| Causes transferred from Master Farrer        | 13  |
| Receivers' accounts . . . . .                | 6   |
| Winding-up case . . . . .                    | 1   |
| Causes transferred from Master Broug-        |     |
| ham . . . . .                                | 10  |
| Receivers' accounts . . . . .                | 7   |
| Winding-up case . . . . .                    | 1   |
| Causes transferred from Master Senior        | 14  |
| Receivers' accounts . . . . .                | 9   |
| Winding-up cases . . . . .                   | 4   |
| Causes transferred from Master Horne         | 37  |
| Receivers' accounts . . . . .                | 9   |
| Winding-up cases . . . . .                   | 4   |
| There therefore remain in the office,        |     |
| causes . . . . .                             | 175 |
| Receivers' accounts . . . . .                | 61  |
| Winding-up cases . . . . .                   | 24  |

No return it appears has yet been made by Master Tinney.

## LAW OF WILLS.

### DISINHERITING CHILD.

In France and other countries a parent is prohibited from depriving his children of his property. In England no such restriction exists. Two cases of disinheriton by fathers of their children have lately arisen within my own knowledge; in one case of the only son,

and child, in the other of a son and daughter. In both cases real estates of large value belonged to the testators, whose caprice is altogether unaccounted for. In the one case the man, if he deserves the name, devised a portion of his estate to a brother, who, on the testator's death, honourably refused the gift, and handed the property over to his, the testator's son, a clergyman. The other portion was left to a near and rich relative who, from compunctions of remorse on his death-bed, sent the son some few hundred pounds, keeping the remainder, many thousands.

In the other case, the entire freehold estates in several counties in England, were left from the son to a daughter; the son is at this moment a barrister and a member of one of the Inns of Court.

It has occurred to me that if an inquiry was instituted before a Committee of members of Parliament into the practice, and if in the result it should appear that it is far from uncommon, it might reasonably become a matter for consideration, whether a Bill might not reasonably be introduced into Parliament on the subject, in *some measure* to check such cruel and unnatural conduct.

Will no independent legal member take the matter up and move for such a Committee: Doubtless very many cruel cases would be brought to light.

5th March, 1855.

DELTA.

## PETITION OF APPEAL.—OFFICE COPY.

It has been decided by one of the Taxing-Masters, that under the first order of October 25, 1852, the solicitor for a respondent is bound to apply to the appellant's solicitor for a copy of the petition of appeal before taking an office copy of it at the Registrar's Office.

The order referred to is as follows:—"In lieu of copies of pleadings and other proceedings in the Court of Chancery, and of the documents relating thereto, being made and delivered by officers of the Court at the office in which they are filed or left, copies of such pleadings, proceedings, and documents (save as hereinafter excepted), are to be made, delivered, charged, and paid for according to the following regulations:—"

And see the 2nd and 3rd of the same order, which directs that "the party or his solicitor requiring any copy, save as hereinbefore excepted, is to make a written application to be delivered to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges" (2); "upon such requisition being made with such undertaking as aforesaid, copies of such pleadings, proceedings, or documents, are to be made by the party or his solicitor filing or leaving the same, or who under the first rule may have taken the copies thereof" (3).

## BUSINESS AT THE JUDGES' CHAMBER.

*Common Pleas Chambers, March, 1855.*

THE following Regulations for transacting the business at these Chambers will be strictly observed until further notice.

Original summonses only to be placed on the file.

Summonses adjourned by the Judge will be heard at half-past 10 o'clock.

Summonses of the day will be called at 11 o'clock, numbered, and heard by the Judge consecutively.

One summons only will be allowed in the Judge's room at the same time.

Counsel will be heard at one o'clock. The name of the cause in which counsel are engaged, to be put on the counsel file.

Affidavits in support of *ex parte* applications for Judge's orders (except those for orders to hold to bail), to be left the day before the orders are applied for, except under special circumstances; such affidavits to be properly endorsed with the names of the parties, the nature of the application, and the names of the attorneys.

All affidavits produced before the Judge, must be properly endorsed and filed.

Acknowledgments of deeds will not be taken before one o'clock.

## BARRISTERS AND ATTORNEYS IN NEW SOUTH WALES.

THE following is a return of the Barristers and Attorneys now on the roll of the Supreme Court of New South Wales, as laid upon the Council Table, on the 20th October, 1854, and ordered to be printed:—

### BARRISTERS IN PRACTICE.

John Hubert Plunkett, William Montague Manning, Edward Broadhurst, William Alexander Pusey, John Bayley Darvall, Thomas Callaghan, George Samuel Evans, Arthur Todd Holroyd, Frederick William Meymott, Matthew Henry Stephen, Charles Throsby, Thomas John Fisher, Charles Knight Murray, Peter Fawcett, Alfred James Peter Lutwyche, Herman Milford, Isidors John Blake, Ratcliffe Pring. Total, 18.

### BARRISTERS HOLDING OFFICE.

John Hubert Plunkett, *Attorney-General*; William Montague Manning, *Solicitor-General*; Samuel Raymond, *Prothonotary of Supreme Court*; Alfred Cheek, *Commissioner of Court of Requests*; Thomas Callaghan *Crown Prosecutor*; Samuel Frederick Milford, *Master in Equity*; James Dowling, *Police Magistrate*; John O'Neil Brennan, *Sheriff*. Total, 8.

### ATTORNEYS IN PRACTICE.

James Norton, George Allen, George Louis Ruigmans, Augustus Hayward, John Dillon, George Robert Nichols, Beant Clements Rodd, George Kenyon Holden, Edward Dorman O'Reilly, John Ryan Brennan, Gilbert Wright,

Randolph John Want, John Lewis Spencer, George John Rogers, John Smith, William Thurlow, Hugh Dickinson, James Jeremiah Byles, James Curtis Eastmure, George Frederick Isaacs, William Godfrey McCarthy, John Ocock, Thomas Williams, Nicol Drysdale Stenhouse, William George Augustus Fitzhardinge, John Gurner, Henry Burton Bradley, William Hardy, John Nepean M'Intosh, Herbert Salwey, James Sterling Hone, Charles Bethel Lyons, Edward James Cory, John Hawkes Valentine Turner, Robert Owen, Henry Baker, Charles M'Donogh, Thomas Lipscomb, Alfred Elyard, Robert Ebenezer Johnson, George Swinnerton Yarrnton, Joseph Chambers, Parry Long, John Williams, junior, John Dumasure, Thomas Adams, George Cimitiere Allman, Andrew Hardie M'Culloch, Richard Henry Way, Joshua Frev Josephson, Richard Coley, Charles Lowe, Piddocke Arthur Thomson, Thomas Ieeton, James Martin, Charles Thomas Richard Johnson, William Roberts, George Rowley, Archibald Little, Edwin Daintrey, William Redman, William Spais, Robert Little, John Morton Gould, Samuel Wadeson, George Want, Edmund Burton, George Wigram Allen, John Dawson, William Russell, James Nainby Shuttleworth, Charles Nicholls, William Whaley Rillyard, Thomas Ward, James Norton, junior, Daniel Foley Roberts, James Walsh, Charles Hamilton Walsh, Richard Holdsworth, Samuel Beamey Serjeant, Layton Odell David James, George Pinnock, William George Pennington, John Stringer Falkner, Montagu Consett Stephen, John Pirie Roxburgh, Robert Brownrigg Minter, Arthur Macalister, Alexander Dick, Henry Shadwick Green, George Pownall, James Greer, Ralph Mackay, John Shaw, William Young, Charles Stafford, William Barker, Daniel Henry Deimehy, Percy Owen John James Lee, William Ralph Templeton, Stephen Campbell Browne, Henry Jones, Robert William Robberds, John Russell Jones, William Walker, William Gibbes, Joseph Ryall, Wilkinson Grantham, Jefferson John Overton, Edward Hargrave, Joseph O'Mearha, James Heart, Wood Readdett, David Lawrence Levy, James Irwin, John W. Street, Samuel Sandiland Rogers, Thomas Weedon, William Teale, James Lionel Michael, George William Graham, Edmund Henry Lenthall, John Malbon Thompson, James Brown, Thomas Kendall Bowden, Henry Newbon, James Thorburn, William Henry Mullen, Samuel Fry Blackmore, John Walton Devereux, John Stamper, Francis James Boyton, Alexander Abel, Robert Broughton, Robert Palmer Abbott, William Partson Moser, Jonas Lander, Maurice Reynolds, John Oxenham, William Briggs, William Joseph Borton.—Total, 143.

### ATTORNEYS HOLDING OFFICE.

Edward Rogers, *Clark of the Peace*; John Moore Dillon, *Crown Solicitor*; David Bruce Hutchinson, *Clark in Supreme Court*; George Wilson, *Clark to City Commissioners*.—[From "The Empire," Sydney, 4th November, 1854.]

## SELECTIONS FROM CORRESPONDENCE.

## EXECUTION ON SHARES IN A PUBLIC COMPANY.

By the 1 & 2 Vict. c. 101, s. 14, shares in a public company belonging to a judgment debtor and standing in his own name, may be charged by order of a Judge, "and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor," and sect. 16 is to the effect, that securities not realised are to be relinquished if the judgment debtor be taken in execution. I do not find any directions in the Act for the judgment creditor to convert into money or realise the property so charged. How is this ordinarily done at the least expense?

TAYTONIS.

## NOTES OF THE WEEK.

## LAW APPOINTMENTS.

The Queen has been pleased to appoint *Theodore Walrod Fuller, Esq.*, Barrister-at-Law, to be a Stipendiary Magistrate in the Island of Trinidad.

The Queen has been pleased to direct Letters Patent to be passed under the Great Seal of the United Kingdom of Great Britain and Ireland, granting to the Right Honourable Sir George *Cornwall Lewis, Bart.*, Barrister-at-Law, the offices of Chancellor and Under-Treasurer of her Majesty's Exchequer. — From the *London Gazette* of March 9.

*John Warrington Rogers, Esq.*, Barrister-at-Law, has been appointed Solicitor-General for Van Diemen's Land.

*J. McCormack, Esq.*, has been appointed Assistant Police Magistrate at Sierra Leone.

*Charles S. Hagg, Esq.*, Barrister-at-Law, is to be the new Administrator-General for Bengal in the room of Mr. F. M. Sanders, resigned.

Mr. Charles Spence is appointed Acting First Class Clerk; Mr. John Watson is appointed Second Class Clerk; and Mr. J. J. Erskine is appointed Third Class Clerk in the Accountant-General's Office.—*Observer*.

Mr. Henry Atkinson Wildes, Solicitor, of Maidstone, for many years Deputy Clerk of the Peace for Kent, has been appointed Clerk of the Peace.

*William Keogh, Esq.*, has been appointed Attorney-General for Ireland.

*John David Fitzgerald, Esq.*, has been appointed Solicitor-General for Ireland.

*Edward Horsman, Advocate* at the Scotch Bar, has been appointed Chief Secretary to the Lord Lieutenant of Ireland.

*Viscount Monck, Barrister-at-Law*, has been appointed a Lord of the Treasury in the room of Lord Alfred Hervey.

The Right Honourable Sir George *Cornwall Lewis, Bart.*, Barrister-at-Law, has also been appointed one of the Lords of the Treasury.

The Right Honourable *Edward Horsman, Advocate* and Chief Secretary for Ireland, was, on the 10th March, by command of her Majesty, sworn of her Majesty's most Honourable Privy Council, and took his place at the Board accordingly.

Her Majesty in Council was, on the 10th March, pleased to appoint the Right Hon. *Matthew Talbot Baines, Barrister-at-Law*, and President of the Poor Law Board, to be a member of the Committee of Council on Education. — From the *London Gazette* of March 13.

*Sir Coleman Michael O'Loghlen, Bart., Q.C.*, of the Irish Bar, has been appointed Law Adviser of the Crown in Ireland.

## IRISH LAW APPOINTMENTS.

*Walter Berwick, Esq.*, has been appointed one of the going Judges of Assize, in the room of *Henry Hughes, Esq., Q.C.*

It is reported that Chief Baron *Pigott* has resigned, and that the late Attorney-General *Brewster* will be his successor.

## COUNTY COURT JUDGES. — CHANGE OF CIRCUITS.

The Lord Chancellor has made an order altering the Circuit of some of the County Court Judges. Mr. Burnaby has been removed from Circuit 36 to Circuit 20, held by the late Mr. Hildyard; Mr. Cooke, of Circuit 11, has been appointed to Circuit 34, and Mr. Lonsdale, the last appointed Judge, is to take the Circuit held by Mr. Cooke.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lord Chancellor.

*BUTTS V. WALLS.* March 3, 10, 1855.

BEHATCH OF TRUST.—WALVER AND ACQUISITION BY CREWING ONE TRUST.

One of three executors proving a will re-

ceived the trust fund, and instead of investing it in the joint names retained it in his hands, paying the tenant for life interest thereon. On her death he promised to pay by certain instalments, but shortly afterwards became insolvent: Held, re-

versing the decision of Vice-Chancellor Wood, that the two other trustees were liable for the breach of trust, inasmuch as the rights of the cestuis que trustent not having been brought distinctly before their notice there was no waiver, and the mere fact of not calling in the fund on the determination of the life estate did not amount to acquiescence.

THIS was an appeal from the decision of Vice-Chancellor Wood, from which it appeared that a testator bequeathed his real and personal estate in trust for his wife for life, and after her death to be divided among his children, and the executors, of whom there were three appointed, were directed to realize the estate, and to invest the proceeds in the public funds in their joint names. Mr. Newsham, one of the executors, got in the estate, but retained it in his hands and allowed the wife 4 per cent. thereon, and upon her death he promised to pay by certain instalments; but not long afterwards he became insolvent, and this suit was instituted to make the other two trustees liable for the breach of trust. The Vice-Chancellor having held that the children had lost their remedy against the other trustees by acquiescing in the funds remaining in the hands of the one trustee, and also by arranging as to the repayment, this appeal was presented.

*Rolls* and *W. D. Lewis* in support; *James* and *Cairns*, contra.

*Cur. ad. vult.*

The Lord Chancellor said, that all the trustees had proved the will, and the only question was, whether they were subsequently released from liability by the *cestuis que trustent*. There was no evidence to show that the children were aware of their legal rights against the other two trustees, and the mere fact of their not proceeding to call in the fund on its becoming divisible did not amount to an acquiescence on their part of the trustees' breach of trust by not investing the fund in their joint names. Besides, they might, not unnaturally, suppose that the trustee who had received the money was alone accountable for it, and before they could be said to have waived their legal rights, such rights must be brought distinctly before their notice. The decision of the Vice-Chancellor must, therefore, be reversed, and the appeal be allowed.

*In re Ludlam.* March 10, 1855.

**BANKRUPTCY—POWER OF OFFICIAL ASSIGNEE TO DISTRIBUTE FUNDS.**

Held, that the official assignee may act alone in the distribution of a fund in Court, where there are no creditors' assignees capable of acting.

THIS was a petition for leave to the official assignee to act alone in the distribution of a fund in the Bankruptcy Court of Birmingham, —there being no creditors' assignees capable of acting.

The bankrupt appeared in person in support.

The Lord Chancellor, after referring to the 12 & 13 Vict. c. 106, ss. 39, 40, said, it was doubtful whether any special order was required to enable the official assignee to act, but to prevent any mistake, the order would be made as asked.

**Master of the Rolls.**

*Richardson v. Rusbridger.* March 10, 1855.

**TENANT FOR LIFE.—SECURING TRUST FUND.—COSTS.—CLAIM.**

*A fund was left to a charitable institution on the death of a lady without children, and the trustees applied for the fund to be secured, but without making the tenant for life a party. An objection on this ground having been overruled an order was made for an investment of the fund and for payment of the costs thereout, and 100*l.* stock had been sold for the purpose. The tenant for life then filed a claim against the executors to make them liable for the consequent diminution of income, when they offered to make up the difference, but she, notwithstanding, went on for the costs: The claim was dismissed with costs.*

A SUM of stock was bequeathed to the plaintiff for life, with remainder to her children, and in default of her having any children to the Governesses' Institution. It appeared that an application had been made by the trustees of the institution, upon there being no children, to have the fund properly secured, and the Court had overruled an objection as to the necessity of the present plaintiff being made a party as well as the executors, and the costs were to be directed to be paid out of the fund. A sum of 100*l.* stock had accordingly been sold, whereby the plaintiff's income was diminished by about 2*l.* 16*s.*, and she filed this claim against the trustees to have the 100*l.* reinvested with costs. The executors agreed to pay the 2*l.* 16*s.* a year in order to avoid unnecessary expense, but the plaintiff continued the proceedings so as to obtain the costs.

*Lloyd, Selwyn, and W. Hislop Clarke* for the several parties.

The Master of the Rolls said that the claim must be dismissed with costs.

**Vice-Chancellor Kindersley.**

*Lukey v. Higgs.* March 5, 1855.

**CLAIM.—SPECIFIC PERFORMANCE OF CONTRACT.—WHERE VENDOR'S LIABILITY AS TO COVENANTS NOT SET OUT.**

*The testator of trustees for sale had covenanted to repair the road opposite certain premises, not to erect any buildings, except a garden wall, so as to be a nuisance to the adjoining owners, and to drain in a certain manner. In a contract for sale to*

*the defendant the conveyance was referred to by date, but the covenants were not set out, and on the conveyance being sent containing similar covenants, the defendant refused to complete: Held, that the defendant had the option of rescinding the contract or of giving the covenants; and on his electing to rescind, the claim to enforce the specific performance of the contract, was dismissed without costs.*

THIS claim was filed to enforce the specific performance of a contract dated in May, 1853, for the purchase by the defendant of certain land at St. John's Wood from the plaintiffs, who were devisees in trust for sale under the will of a Mr. Samuel Jones. It appeared that upon the purchase by their testator of the land in question in February, 1832, he had covenanted to repair the road opposite the premises, not to erect any buildings, except a garden wall, so as to be a nuisance to the adjoining owners, and also to execute all necessary drainage in a north-west direction. The contract with defendant contained a reference to this conveyance by date, but did not set out these covenants, and he objected to complete, on receiving a conveyance containing these covenants.

*Selwyn and Rasch*, for the plaintiffs, citing *Monkay v. Inderwick*, 1 De G. & S. 708; *C. Chapman Barber* for the defendant.

The Vice-Chancellor said, that if the liability of the party had appeared on the contract, the case cited would have applied. Here the insertion of the covenants in the conveyance put the disclosure on the same footing as if the contract had then taken place, and the defendant had the option of either rescinding the contract or of giving the covenant. Upon his electing to rescind, the claim was dismissed without costs.

*In re Reay's Estate.* March 8, 1855.

COMMON LAW PROCEDURE ACT, 1854.—  
PROOF OF DEED BY OTHER THAN ATTESTING WITNESS IN EX PARTE CASE.

*Held, that the enactment in the 17 & 18 Vict. c. 125, s. 26, rendering it unnecessary to prove a deed in certain cases by the attesting witness, does not apply to ex parte, but only to contested, cases.*

In this petition it appeared that it was necessary to prove a mortgage-deed, and the question was raised, whether the evidence of the solicitor, who swore to the handwriting of the parties, was sufficient without calling the attesting witness.

*Bowring* appeared, citing the 17 & 18 Vict. c. 125, s. 26, which enacts, that "it shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission, or otherwise, as if there had been no attesting witness thereto;" and to s. 103, which provides, that "the enactments contained in section "26" of this

Act shall apply and extend to every Court of civil judicature in England and Ireland."

The Vice-Chancellor said, that he had consulted with the other Judges, who were of opinion that in *ex parte* cases other evidence than that of the attesting witness was not admissible under the section cited, although it might be different in contested cases.

*Davis v. Chanter.* Jan. 18, 23; March 10, 1855.

SETTING ASIDE FAMILY DEED OF ARRANGEMENT.—MARRIED WOMAN.

*A family deed of compromise was set aside, where it did not sufficiently show what the doubts were upon which it had been executed, and where the party, entitled in consequence of the property divided being leasehold and not freehold, was a married woman.*

THE testator by his will gave his messuages or tenements and appurtenances, called Langmarsh and Skellands, in trust for all the residue of his estate, &c., therein then to come and unexpired in trust for John Snell for life, with a power of appointment, and in default thereof to William Snell in similar terms, but with a power of jointure. It appeared that William Snell, who took the estates, by his will gave all his personal and other estate to trustees for all his estate and interest therein in trust to sell, and there was a residuary bequest of the proceeds to his wife absolutely, her executors, administrators, and assigns, and she by her will gave all her personalty to her daughter, the plaintiff's wife, absolutely. It appeared, that under the advice of counsel as to the rights of the five children of William Snell, the property was treated as freehold, and upon doubts consequently arising, a deed of compromise was, in the year 1826, entered into, whereby the property was divided into five equal parts among the children, the youngest of whom had since sold, and this suit was now instituted to set aside the deed of compromise, on the ground that the property was leasehold and the plaintiff's wife entitled thereto.

*C. Purton Cooper and Grenside* for the plaintiff; *Eddis* for the purchaser; *Swanston, Baily, Bagshawe, T. H. Terrell, W. Morris, and Bagshawe, jun.*, for the defendants.

*Cur. ad. vult.*

The Vice-Chancellor said, that the deed did not sufficiently show what the doubts were, upon which it had been executed; and having regard to the position of the plaintiff as a married woman, the deed could not be supported, although it might be true that as between the parties themselves, a family arrangement, with a view of avoiding and settling disputes, was perfectly binding, the rule did not apply to the present case; and the deed must be declared void.

**Vice-Chancellor Stuart.**

*Hope v. Corporation of Gloucester.* March 6, 1855.

**PRACTICE WHERE QUESTION AT ISSUE IN SUIT DECIDED BY ANOTHER BRANCH OF THE COURT.**

*Where in a suit, it appeared that the question at issue had been already adversely decided in another branch of the Court, the case was directed to stand over for an application to be made to the Lord Chancellor as to the course of proceedings.*

In this suit, which related to the right of the plaintiff, under a covenant for the renewal of a lease, contained in a demise dated in the reign of Henry 8th, it appeared that the Master of the Rolls had, in the *Attorney-General v. Corporation of Gloucester*, decided that the property belonged to a charity.

The Vice-Chancellor said, that under those circumstances the case must stand over for an application to the Lord Chancellor as to the course of the proceedings.

*Bacon, Malins, Craig, Elderton, C. Chapman Barber, and Batten*, for the several parties.

**Vice-Chancellor Wood.**

*In re Fenton's Trust, ex parte London and North Western Railway Company.* March 10, 1855.

**RAILWAY COMPANY.—LANDS' CLAUSES' CONSOLIDATION ACT.—COSTS PAYABLE BY COMPANY.**

*A railway company paid the purchase-money of certain land into Court, but before completion the vendor died leaving an infant heir: Held, that the costs of getting in the legal estate were not costs payable by the company under the 8 & 9 Vict. c. 18, s. 80.*

It appeared that an order had been made on this petition for the re-investment in other land of the purchase-money of certain lands taken by the above railway company, and for payment by them of the costs of the re-investment, the order, and all the proceedings relating thereto (except costs, if any, occasioned by litigation between adverse claimants), as in the 8 & 9 Vict. c. 18, s. 80. Pending the reference as to title, the vendor died insolvent leaving an infant heir, and it became necessary to obtain a decree declaring the infant a trustee for the petitioners.

*J. T. Hamphry* for the plaintiffs; *Whitbread* for the infant; *Pemberton* for the railway company, contra, as to costs.

The Vice-Chancellor said, that the costs of getting in the legal estate were not payable by the company, who were only liable to the costs of the amended petition and consequent thereon.<sup>1</sup>

<sup>1</sup> See *In re South Wales Railway Company*, 14 Beav. 418; *Ex parte Osmoney*, 10 Sim. 298; *Farrar v. Lord Winterton*, 4 Y. & C. 472; *Midland Counties Railway Company v. Westcomb*, 2 Rail. Cas. 211.

*Saloway v. Strambridge.* March 8, 1855.

**MORTGAGE DEED.—POWER OF SALE.—ASSIGNS.**

*A mortgage deed contained a power of sale to the mortgagee, his heirs, and assigns, and provided that the receipt of him, his heirs, or assigns should be a good discharge for the purchase money: Held, that upon the death of the mortgagee intestate as to real estate, his executors and the heir could confer a good title on a purchaser under the power of sale, without the concurrence of the mortgagee's assignees on his becoming bankrupt.*

A MORTGAGE deed contained a power of sale to the mortgagee, his heirs, and assigns, and provided that the receipt of him, his heirs, or assigns should be a good discharge for the purchase-money. It appeared that the mortgagee assigned to a Mr. Saloway, whose executors on his death, intestate as to his real estate, sold under the power, and the heir subsequently confirmed the sale. The question was, whether a good title could be given on the bankruptcy of the mortgagor upon the assignees refusing to confirm the sale.

*Bird* for the purchaser: *W. D. Lewis* for the vendors.

The Vice-Chancellor said, that the word assigns included the executors to whom the money was due and the heir to whom the estate descended, and that there was a good title.

**Court of Bankruptcy.**

(Before Mr. Commissioner Fane.)

*In re Wigg and another.* March 10, 1855.

**SUSPENSION OF CERTIFICATE.—FALSE ENTRIES AND RECKLESS EXPENDITURE.—IMPRISONMENT.**

*Where bankrupts had made false entries in their books, and their expenditure, as compared with their income, was gross in the extreme, the certificate was postponed for three years without protection until each had undergone three months' imprisonment.*

In this bankruptcy, *Bayley*, for the assignees, opposed on the ground that there were false entries in the books.

*Lawrance* for the bankrupt.

The Commissioner said, that no pretence could be more mischievous than making false entries. The legislature had laid down a rule in regard to this,<sup>2</sup> and no excuse could be heard where a case was clearly made out. Then, besides, the expenditure, as compared with the profits, was gross in the extreme. The certificate would therefore be postponed for three years, without protection until each had undergone a period of three months' imprisonment.

<sup>2</sup> See s. 207 of the 12 & 13 Vict. c. 106.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

— Still attorneyed at your service. — *Shakespeare.*

SATURDAY, MARCH 24, 1855.

### STATE OF LAW BILLS IN PARLIAMENT.

AFTER the lapse of two months since the Session of Parliament was resumed after Christmas, and seeing the near approach of the Easter recess, it may be useful to take a brief review of the several measures relating to the law now under the consideration of the respective Houses.

In the HOUSE OF LORDS the following Bills have *passed* :—

Purchasers' Protection against Judgments—proposed by Lord St. Leonards. This has also passed the House of Commons.

Registration of Dishonoured Bills of Exchange—introduced by Lord Brougham. This stands for second reading in the House of Commons on the 28th inst.

Amendment of Criminal Justice—introduced by the Lord Chancellor.

Lunacy Regulation Amendment. This Bill was also brought in by the Lord Chancellor.

The Bills in *progress* in the House of Lords are :—

Despatch of Chancery Business—recommended by the Lord Chancellor, comprising the appointment of Junior Clerks to the Judges in Chambers.

Ecclesiastical Courts' Bill for the Abolition of the Jurisdiction in Suits for Defamation, brought from the House of Commons, where it was introduced by Mr. R. Philimore.

Commons Inclosure for carrying the Commissioners' Report into effect.

Speedy Trial of Offenders—proposed by Lord Brougham.

In the HOUSE OF COMMONS the following Bills have *passed* :

VOL. XLIX. No. 1,411.

Lunacy Regulation Amendment, recommended by the Lord Chancellor, authorising the grant of Leases.

Ecclesiastical Courts Jurisdiction for Defamation. This Bill is in the House of Lords.

Purchasers' Protection against Judgments. This Bill has also passed the Upper House on the recommendation of Lord St. Leonards.

Commons' Inclosure for carrying into effect the Commissioners' Report.

The following Bills have been *negatived* in the House of Commons :

Execution of English Judgments in Ireland and Scotland, &c.

Real Estates of Intestates. This measure, proposed by Mr. Locke King, if carried, would have partly repealed the Law of Primogeniture.

In the House of Commons the Bills in *progress* are :—

Executor and Trustee Society. This joint-stock company has made small progress at present, and if passed in the Commons, will, no doubt, be strenuously opposed in the House of Lords.

Bills of Exchange and Promissory Notes—proposed by Mr. Keating and Mr. Mulings. This and the next Bill stand for the 28th inst.

Bills of Exchange Registration—brought from the House of Lords, where it passed under the powerful influence of Lord Brougham.

Public Prosecutors and District Agents. This project is designed to appoint official persons to conduct all the criminal business of the country and supersede the Attorneys, except such as may have influence to obtain office.

Law of Partnership.



Law of Mortmain.  
 Personal Estates' distribution.  
 Vacating Seats in Parliament.  
 Friendly Societies.  
 Passengers by Sea.  
 Criminal Justice.

Some other Bills may also be mentioned, though not of immediate interest to the Profession; viz.—

Metropolitan Local Management.  
 Public Health.  
 Nuisances Removal.  
 Education.  
 Marriage Law.  
 Episcopal and Capitular Estates.  
 Union of Benefices.  
 Newspaper and Periodical Postage.

To these may be added Five Bills relating to the Court of Chancery in *Ireland*; And a Bill relating to Intestacy in *Scotland*.

There seems at present to be no prospect of the more important Bills being brought in which formerly agitated the Profession, namely, the Registration of Deeds or Titles, and the alteration of the Testamentary Jurisdiction of the Ecclesiastical Courts. Parliamentary Reform is also evidently suspended.

## DESPATCH OF BUSINESS, COURT OF CHANCERY.

A BILL has been brought in by the Lord Chancellor to make further Provision for the more speedy and efficient Despatch of Business in the High Court of Chancery, and to vest in the Lord Chancellor the Ground and Buildings of the said Court situate in Southampton Buildings, Chancery Lane, with Powers of leasing and Sale thereof.

The preamble states that for the prevention of delay and inconveniences in the carrying on of such portion of the business of the High Court of Chancery as is transacted by the Master of the Rolls and the Vice-Chancellors respectively sitting at Chambers, it is requisite that an addition to the number of junior clerks attached to the Courts of the said Judges respectively should be forthwith made, and a further like addition may hereafter become necessary. The proposed enactments are:

### *As to additional Junior Clerks.*

1. It shall be lawful for the Master of the Rolls and every of the Vice-Chancellors to appoint forthwith after the passing of this Act one additional junior clerk to each of their respective chief clerks, and for the Master of the Rolls and the Vice-Chancellors for the time

being respectively to fill up from time to time such vacancies as may occur in the respective offices of the junior clerks so appointed.

2. If and when from time to time the Lord Chancellor, with the advice and assistance of the Master of the Rolls and the Vice-Chancellors, shall deem the appointment of more than two junior clerks to each or any chief clerk to be requisite for the due despatch of business in the Court of Chancery, it shall be lawful for the Master of the Rolls and the Vice-Chancellors for the time being respectively, or any one or more of them, to appoint a junior clerk or junior clerks to all or any one or more of their or his respective chief clerks for the time being, as occasion may require and the Lord Chancellor, with the advice and assistance aforesaid, may direct, in addition to the junior clerks by the Act intitled "An Act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make Provision for the more speedy and efficient Despatch of Business in the said Court," passed in the Session of Parliament holden in the 15 & 16 Vict. c. 80, and by the foregoing section of this Act respectively, authorised to be appointed, but so nevertheless that the number of junior clerks appointed in addition under this present provision to any one chief clerk shall not at one time exceed two, and that any vacancy from time to time occurring in the office of any junior clerk appointed in addition under this present provision shall not be filled up unless and until the Lord Chancellor, with the advice and assistance aforesaid, shall deem it to be necessary for the due despatch of business that the same shall be filled up, and shall so direct accordingly.

3. Such of the provisions contained in the sections numbered respectively 19, 20, 22, 23, 24, 44, and 45, of the said Act as relate to the removal from office, striking off the rolls, tenure of office, attendances, duties, prohibitions, prosecutions, penalties, punishments, salaries, and annuities, of and respecting the junior clerks by the same Act authorised to be appointed, are hereby extended and applied to and in case of the junior clerks to be appointed under this Act.

### *As to the transfer of the business of the Report Office to the Clerks of Records and Writs.*

4. The office of Master of reports and entries shall be and the same is hereby abolished from the first occurrence of a vacancy therein after the passing of this Act, or from such other period before the occurrence of a vacancy as the Lord Chancellor, with the advice and assistance of the Master of the Rolls, may by order direct.

5. From and after the time when such abolition shall take effect, the business of the Report Office shall be conducted and carried on under the superintendence, direction, and control of the Clerks of Records and Writs, who shall thenceforth discharge all such duties relative to the Report Office as may then be belonging to the office of the Master of Reports and

Entries as far as the same may be from time to time necessary or proper to be discharged, subject nevertheless to such rules and regulations as the Lord Chancellor, with the advice and assistance of the Master of the Rolls, may from time to time think fit by order to make concerning the same.

6. Repeal of part of 15 & 16 Vict. c. 87, s. 29, as to the Clerk of Reports.

7. The offices of the two clerks appointed under the last-mentioned provision to perform the duties of the Clerk of Reports shall be continued under this Act, and upon any vacancy in either of those offices it shall be lawful for the Lord Chancellor to fill up the vacancy; and if and when the Lord Chancellor, with the advice and assistance of the Master of the Rolls, shall deem the appointment of more than two persons to be requisite for the due performance of the duties of the Clerk of Reports or otherwise for the due dispatch of the business of the Report Office, it shall be lawful for the Lord Chancellor to appoint from time to time, in addition to such two clerks and their successors as aforesaid, so many clerks of and in the Report Office as occasion may require, and the Lord Chancellor, with the advice and assistance last aforesaid, may direct, and from time to time to fill up all or any of the vacancies which may occur in the offices of the clerks so appointed in addition as aforesaid.

8. Nothing in this Act contained shall be taken to repeal or alter, as far as regards James Thomas Fry, the present Master of Reports and Entries, any of the provisions contained in the sections numbered respectively 34, 35, and 36 of the said Act "for the Relief of the Suitors of the High Court of Chancery," relating to the countersigning by the Master of Reports and Entries of notes or cheques drawn by the Accountant-General of the Court of Chancery upon the Bank of England, and the payment thereof by the same Bank, and directing that the Master of Reports and Entries should also perform all such other duties (as well as the duties in the same Act mentioned) as the Lord Chancellor should from time to time by any order direct; and the same provisions shall respectively continue in full force as far as regards the said James Thomas Fry, after and notwithstanding that the abolition of the said office may have taken effect under this Act.

9. Provision for continuance of present Master's salary.

#### *Further Salaries.*

10. In case, upon the abolition of the office of the Master of Reports and Entries taking effect, any of the persons now respectively holding the offices of Clerks of Records and Writs shall be required under this Act to discharge the duties of the office of the Master of Reports or Entries, or any of them, they respectively shall and may thenceforth and as long as they shall be required to discharge the same duties, or any of them, receive, in

addition to their respective salaries as Clerks of Records and Writs, such salaries, not exceeding the sum of                    pounds per annum each, as the Lord Chancellor, with the advice and assistance of the Master of the Rolls, shall by order direct.

11. The two clerks already appointed and the clerks who may be hereafter appointed to perform the duties of the Clerk of Reports or to act in the Report Office shall respectively be entitled under this Act to receive such salaries as the Lord Chancellor, with the advice and assistance of the Master of the Rolls, shall from time to time by order direct, but so that the whole amount payable for all such salaries shall not in any one year exceed the sum which, if equally divided between or among all such clerks for the time being, would admit of a salary of 250*l.* for each of them.

12. Power to Lord Chancellor to grant retiring allowance to Alexander McKean.

13. How salaries, compensations, &c., to be paid.

#### *Disposing of Masters' Offices.*

14. Reciting the 32 Geo. 3, c. 42, and 15 & 16 Vict. c. 80, s. 51, as to the Masters' Offices in Southampton Buildings; and that fuller powers are requisite for enabling the Lord Chancellor to let, sell, or dispose of the Masters' offices, and it is desirable that like powers should extend not only over the said Master's offices, but also over the whole of the ground acquired under the said Act of Geo. 3, and of the building already erected on part thereof, and such other buildings as may be hereafter erected thereon.

The last recited enactment, 15 & 16 Vict. c. 80, s. 51, is repealed.

15. The ground and buildings vested in the Lord Chancellor in trust.

16. Power of leasing.

17. Power of sale.

18. Power to vest the ground, &c., in a purchaser.

19. The rents, purchase moneys, and other moneys which shall be payable upon or in respect of any such demise, letting, or sale as aforesaid shall be respectively paid by such person, and in such manner as the Lord Chancellor shall from time to time direct, into the Bank of England, with the privy of the Accountant-General of the Court of Chancery, to such account or accounts already opened or to be opened as the Lord Chancellor shall from time to time direct: and thereupon such rents, purchase moneys, and other moneys respectively shall become and be dealt with as part of the respective funds (if any) theretofore standing to such account or accounts as aforesaid, or be otherwise subject to the order of the Lord Chancellor for the purposes of the Court of Chancery, and for the benefit of the suitors of the said Court, according to the said provision contained in the said Act of 32 Geo. 3, respecting the money thereby directed or authorised to be placed out as aforesaid.

## SECOND REPORT OF THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES.

*To the Queen's most Excellent Majesty.*

May it please your Majesty,

WE, the Charity Commissioners for England and Wales, are directed to make a report to your Majesty of our proceedings during the year 1854.

We have the greater satisfaction in being permitted to discharge this duty as, during the period referred to, a first and important experience has been acquired of the practical operation of the law in the administration of which we are engaged, and of the efficacy of its different provisions for their intended purposes.

Our report to your Majesty for the year 1853 embraced our proceedings during the very short period only which had elapsed from the date of our Commission.

In addition to the cases which had been then brought before us, we have received upwards of 1,100 other special applications for very various purposes during the past year. The consideration of these cases in their different stages, and the necessary inquiries and proceedings relating to them, together with the duties arising in the important department in our office of the Accounts of Charities, have largely engrossed our time and labours, and have deprived us of the power of directing our sufficient consideration to several important and more comprehensive objects which we are very desirous of accomplishing.

On the other hand, the number and frequency of these applications for our aid and interference appear to us to furnish a very satisfactory evidence of the want which had been felt throughout the country of such assistance, and we anticipate a continuing increase of such applications, as all parties interested in charitable institutions are brought to a more complete knowledge of the provisions of the new law.

Of the applications made to our Board during the last year, a large proportion may be distributed into classes corresponding to the different provisions of the Act.

Our authority to give advice to trustees of charities upon doubtful or disputed questions, has been exercised in a large number of cases with very beneficial effect, and the provision of the Act for this purpose appears to us to be, in its operation as well as design, highly salutary. The advice affords to trustees a protection and authoritative guidance in the performance of their trust which is, in many cases, essentially required by them, but which could otherwise be obtained only by applications to the Courts at the expense of the charities. It has been the means of allaying disputes and preventing litigation in several cases, and may be expected to conduce materially to the right administration of charitable funds.

Much advantage has also resulted from the provisions under which the Board may authorise leases, and alienations, and other dealings with the estates of charities and purchases for their benefit. We have received and dealt with a large number of applications for these purposes, and we believe that the facilities afforded by our orders in many such cases, and the control which we have thought it necessary to exercise in other cases over proposals having similar objects, have been very beneficial to the charities whose interests were affected. The facility with which the authority of this Board may be appealed to, and may be exercised for these purposes, suggests the expediency of placing all dealings with charity estates, exceeding the course of ordinary management, to a large extent at least, more strictly under such control. The practice of granting leases of such estates for fines, and especially for any terms of life, appears to us particularly to require such restriction, of which the numerous instances of charitable institutions impoverished by the effect of so vicious a system sufficiently prove the necessity.

Our jurisdiction to authorise the discharge of officers of charities has been exercised in the cases of several masters of schools disqualified from retaining their offices.

We have instituted, by the aid of our inspectors, a local inquiry into each such case, affording a full opportunity to the master of stating and sustaining his claims. The efficacy of this jurisdiction might, in our opinion, be increased, if the order of the Board in such cases (including any conditions imposed by them on the trustees) had the force of a binding award between the trustees and the master. We have had occasion to regret that this is not the effect of the existing law.

We have considered it our duty in some important cases to withhold our authority for the proposed institution of suits, and to grant such authority in others, under arrangements for protecting the charities against consequent costs: and in 23 instances the cases of the charities which have been under our consideration have in the result been certified by us to your Majesty's Attorney-General, inviting his institution of the proceedings which appeared to us to be required for their interests.

It has been the object of very numerous other applications to our Board to obtain the appointment or removal of trustees of charities, the establishment of schemes for their regulation, and other remedial measures.

A large number of these cases, particularly affecting the smaller charities, has been submitted to us without professional assistance, and have become the subjects of protracted inquiry and correspondence from our office. It is necessary to us in these cases to ascertain the precise circumstances, to define and point out to the parties the specific objects proper to be accomplished or sought, to prepare in many instances the schemes required, and to indicate the proceedings in detail proper to be adopted:

many such cases are in progress at different stages of their advancement through our office, and many have been conducted by the applicants themselves ultimately through the County Courts.

The number of cases in which we have granted certificates authorising applications to the Judges of the Court of Chancery or the County Courts, after the prescribed public notices, are found to be very nearly equal, being respectively 71 and 72. Our authority to resort for any purposes to the district Courts of Bankruptcy has not been applied for.

The appointment of efficient and responsible trustees, particularly for the smaller charities, and the establishment of suitable schemes for their application and management, are very extensively required, and most frequently constitute the necessary and sufficient means of rectifying past abuses and precluding their recurrence, and in this view the comparatively limited number of the applications, which have been made to us with these objects, and have been proceeded with, is unsatisfactory.

We have experienced a great indisposition on the part of many applicants, particularly on behalf of the smaller charities, to pursue the relief (which they have expected to receive directly from our Board) through any ulterior proceedings in the Courts; and for this reason the comparative numbers of the cases, referred by us to the Judges of the Superior or the Local Courts, afford no real test of the proportion of the larger and smaller charities in which such relief is required. We need not state our entire deference to the wisdom of the Legislature in dealing with these subjects, but we may be permitted to express our conviction in the result of our experience, that our usefulness would be greatly increased, and the public expectation of advantage from our Commission would be much more largely realised, if the direct remedial powers of our Board (now circumscribed within very contracted limits) were judiciously, but considerably extended, within whatever restrictions as to the value of the endowments to be dealt with, and subject to whatever appeal may be considered expedient.

There are no limitations of the Act of which we have had more frequent occasion to desire a relaxation than those which restrict or impede transfers to the official trustees of charitable funds. The institution of such trustees in whom the endowments, particularly of the lesser charities, may not only be permanently secured from misappropriation or loss, but exempted also from the cost of transfers and management, is a most beneficial provision. The loss and waste of charity funds, left unsecured in private hands, or invested on failing or insufficient securities, or separated in their legal devolution from the devolution of the trusts to which they belong, are of too frequent experience, as is also the onerous expense often incurred in procuring their transfer. We have endeavoured to protect many charitable funds from these risks and evils by procuring or en-

couraging their transfer to the official trustees, and notwithstanding, that those trustees are unauthorised to receive money for investment by themselves under any circumstances, or to receive transfers of stock or securities without the order of a Court, we have authorised applications for such orders comprising about 13,000*l.* stock, principally in small sums, and transfers of about 11,000*l.* of that amount have already been completed.

We have no doubt that advantage would be taken of this beneficial provision to a very large extent, if the facilities for that purpose were increased; and we venture to suggest, that transfers and payments of charitable funds to the official trustees might be safely authorised by the order of our Board. We are sensible of the necessity of placing such funds under the guard of additional and stringent regulations, but these and other provisions are required with respect to the duties already entrusted to the official trustees.

The directions of the Act for the management of funds in the hands of the official trustees have been carried into effect with entire regularity and ease, the dividends on the funds held by them being duly apportioned immediately on their receipt and remitted to the acting trustees of each charity.

Amongst the various applications which have been made to us, many have had for their objects the removal of persons alleged to have been unduly placed in charitable institutions, and the establishment of proper objects therein, the restitution of officers of charities to employments of which they had been deprived, but especially, and in numerous cases, for the apportionment of parochial and other local charities after divisions of the parishes or other districts entitled to their benefit. We have had no jurisdiction to deal directly with the matter of these applications, but we think it our duty to refer to them for the purpose of inviting consideration of the expediency of constituting some authority, under which such apportionments and other objects may be more summarily and conveniently effected than under the existing law, such an authority appears to us to be much needed, particularly in the case of the apportionments.

The inspectors appointed by your Majesty's Commission have been actively engaged in the performance of their duties. Under our direction, they have investigated the circumstances of about 800 charities, and have been enabled to report to us the result of a large proportion of these inquiries. Their examinations have comprised many separate institutions in different parts of the kingdom, and in some instances the whole charities of particular towns or localities. The former class has included particularly the important foundations of Sherburn Hospital, near the city of Durham, and the College at Dulwich, in the county of Surrey; and we trust that we may be allowed to submit to your Majesty in a supplemental report schemes which have been prepared, or are now in preparation, for the more bene-

ficial administration of these and some other institutions.

The second class of cases includes particularly the numerous charities of the town of Warwick and the city of Coventry, and the charities of several districts of the city of London.

We have selected these cases for connected examination, in the expectation that we shall be enabled to approve comprehensive schemes for the more beneficial employment of their large aggregate revenues, and we shall anxiously apply ourselves to the accomplishment of this purpose at as early a period as the magnitude and complication of the questions to be dealt with, the necessary communications with the parties interested, and the pressure of our other duties, will permit.

In our former report to your Majesty we referred to the expected returns of the accounts of all charitable institutions, expressing the importance attached by us to those returns for our practical guidance. We did not unduly estimate their value for this purpose, and the accounts already received, and of which the examination is in active prosecution in our office, are found to afford the best indications, generally attainable by us, of the condition and management of the charities to which they relate. It need not be observed that this examination must be a work of protracted labour, but it is diligently pursued.

It is, however, our duty to report, that the compliance with the law which requires these returns has hitherto been very incomplete. The charities, of which we had received the proper accounts at the close of last year, scarcely exceeded 8,000 in number, and although daily additions are made to them, the number of returns received for the year 1853 up to the present time is less than 10,000. We do not doubt that a general obedience to a very beneficial regulation, will be the future result of more sufficient and correct consideration than may have yet prevailed upon this subject with many trustees; but in the meantime we have considered it our duty to obtain to the fullest extent of our power a compliance with the requisitions of the Act.

With this subject, we have taken such means as appeared to us best calculated for making the law most generally known; we have also distributed forms of account in large numbers for the assistance of trustees, and special requisitions having been addressed from our office to the trustees of not less than 1,500 charities, we ultimately thought it fit that proceedings of a compulsory and penal character should, in some cases, be adopted. About 60 cases have been selected for such proceedings; of charities principally under the management of trustees occupying some public position as municipal and parochial trustees, rather than those in private stations. We have regretted the necessity for these measures, and we may hope that little necessity for them will hereafter exist; but we have the present satisfaction of reporting that it has not hitherto been requisite

to pursue any of these proceedings beyond the first or preliminary stages.

The Charitable Trusts Act has attached no specific penalty to the omission of the returns, and we have reason to believe that a very erroneous impression to the effect that the law might be disregarded with impunity, had extensively prevailed.

We consider it incumbent on us to distinguish and record the exertion of the Society of Friends to give effect to the law as affecting foundations for their benefit. The duty of procuring complete returns of all their charities in the kingdom was undertaken shortly after the commencement of our duties by certain highly respectable members of their body, and has been performed in a very systematic and complete manner.

With reference both to the accounts and to our general duties, we are constantly sensible, that more local aid than is available to us in our functions would conduce greatly to their effective and safe discharge. Our means of ascertaining the trustees of different charities are very imperfect, and we are compelled to rely to an inconvenient and unsatisfactory extent on epistolary correspondence only for our information, and for the means of exercising some of our material authorities.

The valuable reports of the former Commissioners for inquiry into charities furnish at present the principal source of our information respecting the general foundations under our jurisdiction. But as many of those foundations were exempted from that inquiry, or were not brought to the knowledge of the Commissioners, and many others have been established subsequently, these reports are necessarily imperfect as a register of the existing charities, and owing to the lapse of time they rarely afford sufficient information from which the existing trustees of the charities included in them can be ascertained, nor have we any sufficient means of supplying these deficiencies.

We are bound to acknowledge the exertions used by many gentlemen of station and influence, and by many of the clergy and others, to bring the circumstances of particular charities to our knowledge, and to advance the objects of the Act; but this assistance has been very partial, and must be insufficient at all times for the duties required from us.

It is our impression that the services of local inspectors, or agents to be employed for obtaining our necessary information, and for instituting special inquiries, and performing many other acts under the delegated authority of our board, and particularly for requiring and auditing (where necessary) the accounts of charities, would be productive of great benefit.

We think it also of much importance that the powers of inquiry exercisable by the Commissioners themselves should be enlarged.

We are authorities to demand accounts and written statements from the trustees only, or administrators of charities, and any person asserting an adverse claim of title to property which may be the subject of inquiry is ex-

empted from all question. We have no authority to require information from third parties, or the attendance of any person for the purpose of examination, and our power to require the transmission or production of deeds and documents (which is most material to the purpose of our Commission) is limited, if not questionable.

The inspectors are authorised to take evidence on oath, and have some other powers of inquiry exceeding, but not largely, those of the Commissioners.

These restrictions are found materially to impede the beneficial operation of the Act, and we think that they may be advantageously relaxed if the Legislature, in its wisdom, should think fit.

An exemption from the Act has been claimed and insisted on by certain collegiate bodies, which we do not consider to have been contemplated by the Legislature. The exemption, if sustainable, would, we think, comprise a large class of important charities, and it has appeared to us the more necessary on that account that the question should be authoritatively determined. With this view we have directed proceedings proper for that purpose to be instituted against a distinguished institution, for bringing the matter in a compendious form before the legal tribunals.

Before closing our report we beg, with your Majesty's permission, to express our sense of the loss sustained by the public service, and especially by this Commission, in the recent death of the Reverend Richard Jones. We are deprived of very valuable co-operation in our duty, which was always afforded by him with zealous interest in the promotion of its objects, and with great personal kindness towards his colleagues.

28th February, 1855.

## LEGAL STATISTICS.

### INCUMBERED ESTATES' COURT, IRELAND.

THE number of appeals from the Incumbered Estates' Court, Ireland, to the Irish Privy Council from the 20th March, 1854, to the 20th February, 1855, was 25,—of which 13 were affirmed, 9 were reversed, 1 was dismissed by consent, and 2 remain undisposed of.—*House of Commons' Return*, 6th March, 1855.

### COURT OF SESSION, SCOTLAND.

It appears that in the *Outer House*, 1488 causes have been for the first time enrolled before the five Lords Ordinary; that there have been 497 decrees in absence; 602 final judgments pronounced in litigated causes; that there are 222 causes ready for debate but not heard, and 27 causes at *Avisandum*.

In the *Inner House*, 1st division, there have been 200 reclaiming notes presented against judgments during the above period; that there have been 748 incidental and summary applications, of which 658 have passed as matter of

form, the remaining 90 only being followed by litigation.

There have been 328 final judgments pronounced in litigated causes without the intervention of a jury, and 12 tried by jury. The number of causes ready for judgment on hearing counsel or otherwise is 97, of which three are to be tried by jury.

In the 2nd division, the number of reclaiming notes against judgments of the Lords Ordinary was 106, and there were 349 incidental and summary applications, of which 287 were passed as matter of form. The number of final judgments without the intervention of a jury was 99, and tried by jury 7.

The number of causes ready for judgment on hearing counsel or otherwise is 40, of which 5 are to be tried by jury.

## LAW OF COSTS.

### ON PETITIONS UNDER LANDS' CLAUSES' CONSOLIDATION ACT.

THE Eastern Union Railway Company took certain land, which was devised by a testator to his wife for life, with remainder to his heirs, and the purchase-money was paid into the Bank and invested in Consols,—the dividends being paid to the widow under an order of the Court. Upon the death of the widow in February, 1853, two persons claiming to be the co-heirs, presented two several petitions for the transfer to them of their respective portions of the stock in Court, and a reference was thereupon made to Chambers to ascertain who were the heirs-at-law of the testator, and the real representatives of such as were dead. Advertisements were inserted in the newspapers, and several claimants appeared, and in consequence the investigation proved troublesome.

The petitioners succeeded in supporting their claim, and on the question, as to who were liable to pay the costs occasioned by the two petitions, the Vice-Chancellor Wood said, that the company were clearly liable:—"Each of the petitioners claimed as co-heirs, deriving his title from one of two sisters, who had inherited as heirs in coparcenary. Neither petitioner could know what might be the pedigree of the other. Each had traced his title through the sister from whom he was descended, and need not incur his title with the pedigree of the co-heir. The two petitions were therefore properly presented.

"With respect to the claimants who answered the advertisements, the petitioners had filed

some affidavits in answer to the claims set up, and those affidavits were no doubt a *litis contestatio*, and therefore the costs of them came within the exception in the 80th section.

"The company had a right to require a bill of the conveyancing costs to be delivered in the usual way, under ss. 82 and 83; and therefore the order now made would be only, under the 80th section, for payment of the costs of the petitions, 'except the costs by the Act otherwise provided for, and the costs occasioned by the adverse claims of other parties.'" *In re Spooner's Estate*, 1 Kay & Johnson, 220.

## ECONOMY OF THE LAW.

### A NEW PROJECT OF CHANCERY REFORM.

A PAMPHLET has just made its appearance "on the Economy of the Law; especially in relation to the Court of Chancery," by George Cochrane, Esq., Barrister-at-Law,<sup>1</sup> the substance of which, as a very extraordinary production, we shall submit to our readers. The Author is a member of the Bar, and informs us that his pages are the result of 21 years' experience in the Chancery Courts of England. After advertising to the origin of society, he speculates with considerable plausibility on the commencement and progress of our judicial system, and the necessity of employing lawyers to conduct and settle the disputes of the community. He considers the Judges, however appointed or authorised, were originally guided by common sense, the basis of the principles of Equity. Next in order of the social system and of legal history comes the Attorney or Solicitor, and subsequently the Barrister, who are thus introduced to our notice:—

"As commerce increased, persons could not find time to attend to their own causes; and therefore they entrusted their causes to other persons—their relatives or friends—to plead them before the Judges. These persons must have been the origin of the Attorney or Solicitor; and I shall take leave to give them thenceforth those names.

"When first authorised to act, the Solicitor must have been some highly valued friend of the principal—some person whom he considered part of himself—a person interested in the welfare of the principal and of his family;—in short, an Eliezer.

"No men were more useful to the state than

Solicitors. They brought promptly before the Judge, the cause, which they soon decided; and the persons entitled to the property obtained that which was their due. The latter embarked it in commerce, it increased, and the country flourished thereby. The increase of population brought with it an increase of commerce; with that increase of commerce, law-suits multiplied to a very great extent—the consequence of commercial transactions; for the passions of men will cause them to disagree.

"Solicitors then found that it was impossible to be at their chambers, listening to the relations of their employers, and to be in Court at the same time; and consequently they employed other persons to remain in Court the whole of the day, to argue the suits for their clients. This necessity must have been the origin of the present body of Advocates or Barristers, from which body, and not from the Solicitors, the Judges are now made.

"Thus it will be perceived that Barristers and Solicitors are useful members of the state. Each performs his task as well as he can. The Solicitor is the exponent of the good or evil passions of his employer, and it is his duty to protect and defend him. The state could not go on without the Solicitor; and it is that knowledge which has given the Solicitor the immense power that he wields. The client is perfectly in his power: if the Solicitor is evil disposed, he can reduce him from affluence to poverty—nay, his life is at his disposition.

"Among the Solicitors, I know many upright men, who do not abuse their power, but act most creditably; and I am certain that those gentlemen, and others whom I do not know, and who act with the same integrity, will approve of what I am now writing.

"From my own experience and observations of the English Bar, I have never met with a more honourable body of men. They do their duty by their client, and uphold the interest of that client with the greatest zeal. They do not possess that power which the Solicitor possesses."

Mr. Cochrane then proceeds to notice the old complaint of delays in Chancery suits, which he contends will destroy our commerce, unless prompt measures are taken to remove the evil. He justly lauds Lord Justice Turner, who introduced an excellent Act for the improvement of our equitable jurisdiction; but the other recent Statutes and Orders of Court which have effected such large reforms in the business of the Court of Chancery are very imperfectly stated. In his second chapter, wherein the Author treats of that part in Chancery which relates to disputes in commercial transactions, we are told that—

"The causes originating the introduction of suits in Chancery are too numerous to mention here. It is simply my business to state the

<sup>1</sup> Published by Effingham Wilson, Royal Exchange; and B. W. Gardner, Princes Street, Cavendish Square.

time they ought to be in the Court, and how they should be got speedily out of it.

"I have been connected with the Court of Chancery for about twenty years—fifteen years as a barrister, and five as a student; and my opinion is:—

"That suits of which the persons and the property are in the United Kingdom ought to be decided in three months: never to exceed six months. In nine cases out of ten, the above time would be sufficient.

"That suits where the persons or the property are in the colonies, ought to be decided in twelve months. The exceptions would be rare.

"That suits of which the persons and the property are in foreign countries, would require a longer time; but the proceedings should be vigilantly watched by the Judge and the officers of the Court.

"The mode in which they should be got speedily out of Chancery is, by increasing the number of Judges to the extent mentioned in the following pages.—No other mode will be effective."

For remedy of the grievances which Mr. Cochrane points out, he proposes that a large number of new Courts of Equity should be constituted. He says:—

"I was formerly of opinion that it would be desirable to extend the jurisdiction of the County Court Judges; but I am of opinion, that the amount of business mentioned in the foregoing chapters (and which is requisite to be done) would be so great, that the present County Court Judges could not execute it, and at the same time fulfil their present duties usefully to the lower classes of the community; I therefore respectfully submit that fifty new Courts should be created, viz.:—

"Thirty for England and Wales.

"Ten for Scotland.

"Ten for Ireland.

"That in each Court there should be a Judge, a Registrar, three Secretaries, an Usher, and a Porter.

"One of the secretaries should attend to the acceleration of causes mentioned in the second chapter.

"Another secretary should attend to that property mentioned in the third chapter.

"And the third secretary should attend to the property mentioned in the fourth chapter.

"The management of these Courts, together with the Superior Courts of Chancery and the Colonial Courts, will require the undivided attention of the Lord Chancellor, who should not continue the office of Judge, but be entirely a statesman. His eye should not only range over the Courts of the United Kingdom, but over those of the colonies.

"The reader will probably inquire why the Lord Chancellor should not hear causes? The following is my answer: The time occupied in hearing causes, from 10 in the morning until four in the afternoon, exhausts the mind, and

incapacitates it from attending to anything else. The surveillance of the practice of the Courts above-mentioned, and the improvement of the law, require the application of a mind that is vigorous, and that vigour of mind can only be obtained by not allowing it to be fatigued by hearing causes from 10 till four o'clock.

"The appeals from the 30 Courts in England and Wales should be to the Lords Justices of Appeal, which, for the expedition of business, might be composed of two Courts; for at present, when the Lord Chancellor sits distinct from the Lords Justices, there are two co-equal Courts of Appeal. These Courts of Appeal might be composed of three members each. From the Lords Justices of Appeal there would be an appeal, as at present, to the House of Lords; and when that occurred, one of the Lords Justices of Appeal should sit there to adjudicate it."

This proposition is startling enough, but the *modus operandi* and the "ways and means" whereby the expenses attendant on these new arrangements are proposed to be effected, surpass our humble powers of practical calculation. Mr. Cochrane thus details, 1st, the expenditure, and 2nd, the mode of providing for it:—

1st. "The construction of 50 buildings for the new Courts in the United Kingdom would average about 5,000*l.* each, excepting those for London, which would require about 6,000*l.* each, on account of the greater value of the ground and the higher price of labour; and assuming that there are five of the above Courts in London, the calculation would be as follows:—

|   |         |
|---|---------|
| For the five Courts in London, at 6,000 <i>l.</i> each  | £30,000 |
| For the forty-five Courts in the Provinces and in Scotland and Ireland, at 5,000 <i>l.</i> each | 225,000 |
| Total for buildings   | 255,000 |

As these buildings would require one year to construct, it would be useless to appoint Judges and officers until the end of the first year.

|   |         |
|---|---------|
| At the end of the first year five per cent. interest must be added for the above outlay | 12,750  |
|   | 267,750 |

At the end of the first year the Judges' and officers' salaries would commence:—

|                                      |        |
|--------------------------------------|--------|
| The Judge's salary, per annum        | £2,000 |
| The Registrar's salary, per annum    | 400    |
| First Secretary's salary, per annum  | 400    |
| Second Secretary's salary, per annum | 400    |



|   |     |   |
|---|-----|---|
| Third Secretary's salary, per annum . . . . . | £   | £ |
| The Usher's salary, per annum . . . . .       | 400 |   |
| The Porter's salary, per annum . . . . .      | 75  |   |
|   | 75  |   |

Amount of salaries per annum for each Court. 3,750

Multiply 3,750*l.* by 50, will give the total amount of one year's salaries for 50 Courts. £187,500

The expenses of the successive years would simply involve the salaries of the Judges and the officers of the Court; therefore add to the above sum the salaries of five following years; viz. five times 187,000*l.* 937,500  
1,125,000

Thus the salaries of the Judges and officers of the Courts will be paid during six years by means of the debentures or bonds mentioned in page 24; after that period, it is assumed that the fees of the Court will be sufficient to pay the salaries and the interest of the capital, leaving a surplus to accumulate to pay off the capital 1,392,750*l.* at the end of 25 years.

Total required for the building of 50 Courts, and the salaries of the Judges and officers for six years, involving a period of seven years from the commencement of the building, and regarded in a subsequent calculation as the consolidated capital . . . . . £1,392,750

2nd. The mode of supplying these expenses are thus set down:—

"The fifty Courts will have yearly an increasing income from fees; and the calculation I have made upon the subject is the following:—

| Years  | £      | s. | £ | s. |
|--|--------|----|---|----|
| 1 As the Courts would be constructing the first year, no fees could arise; but at  |        |    |   |    |
| 2 the end of the 2nd year the average amount of fees arising from each Court would be 1500 <i>l.</i> ; this sum, multiplied by 50, the number of Courts give . . . . . | 75,000 | 0  |   |    |
| Deduct 5 per cent. in-   |        |    |   |    |

Surplus  
Accumulation  
Fund arising  
from Fees of  
the Court.

terest on 267,750*l.*, building account, and on 187,500*l.* one year's salary — amount of capital now expended 22,762 10

52,237 10

3 At the end of the *third* year, the fees of each Court would average 2,000*l.* Multiply by 50 . . . . . 100,000 0  
Deduct 5 per cent. interest on 267,750*l.*, and on 375,000*l.*, two years' salaries—capital now expended . . . . . 32,137 10

67,862 10

4 At the end of the *fourth* year, the fees of each Court would average 2,500*l.* Multiply by 50 . . . . . 125,000 0  
Deduct 5 per cent. interest on 267,750*l.*, and on 562,500*l.*, three years' salaries—capital now expended . . . . . 41,512 10

83,487 10

5 At the end of the *fifth* year, the fees of each Court would average 3,500*l.* Multiply by 50 . . . . . 175,000 0  
Deduct 5 per cent. interest on 267,750*l.*, and on 750,000*l.*, four years' salaries—capital now expended . . . . . 50,887 10

124,112 10

6 At the end of the *sixth* year, the fees of each Court would average 4,500*l.* Multiply by 50 . . . . . 225,000 0  
Deduct 5 per cent. interest on 267,750*l.*, and on 937,500*l.*, five years' salaries—capital now expended . . . . . 60,262 10

164,737 10

7 At the end of the *seventh* year, the fees of each Court would average 5,500*l.* Multiply by 50 . . . . . 275,000 0  
Deduct 5 per cent. interest on 267,750*l.*, and on 1,125,000*l.*, six years' salaries—capital now expended . . . . . 69,637 10

205,362 10

697,800 10

Surplus  
Accumulation  
Fund arising  
from Fees of  
the Court.

|   | £ | s. | £          | s. |
|---|---|----|------------|----|
| The capital, comprising buildings, 267,750 <i>l.</i> , and the first six years' salaries, 1,125,000 <i>l.</i> , Total, 1,392,750 <i>l.</i> is now stationary or consolidated; for the fees of the Courts next year will pay the salaries of the Judges and officers, the interest of capital, and leave a surplus to carry forward to the above Accumulated Fund of 697,800 <i>l.</i> |   |    |            |    |
| 8 At the end of the eighth year, the fees of the Courts would average 6,500 <i>l.</i> Multiply by 50 . . . . .  |   |    | 325,000    | 0  |
| Deduct three years' expenses for salaries . . . . .   |   |    | £187,500   | 0  |
| Deduct 5 per cent. interest on capital of 1,392,750 <i>l.</i> 69,637 10   |   |    |            |    |
|   |   |    | 257,137    | 10 |
|   |   |    | 67,862     | 10 |
| The fees of the Courts during the successive years would, on an average, amount to more than 6,500 <i>l.</i> per annum; but we will now assume those figures: then the <i>surplus</i> every year, after payment of salaries and interest on the consolidated capital, would be 67,862 <i>l.</i> 10 <i>s.</i> , which would, in the seventeen following years, amount to . . . . .     |   |    | 1,153,662  | 10 |
| 25 Years  |   |    | £1,919,325 | 0  |

"Thus, at the termination of 25 years—the period at which it has been proposed the bonds should be issued—the sum of 1,919,325*l.* would be in the hands of the Government, and in addition, the interest arising from the annual accumulations, to pay off the capital of 1,392,750*l.* The margin I have allowed is very large, and perhaps the calculation might have been based upon a loan of 20 years, instead of 25; but in such an undertaking it would be well to embrace a period that would meet all contingencies."

We must leave our readers to pause on this extraordinary scheme, which seems to surpass all that we have lately heard, and which Mr. Cochrane conjectures will be the salvation of the country.

## NOTICES OF NEW BOOKS.

*Sketches, Legal and Political, by the late Right Hon. Richard Lalor Sheil, edited, with Notes, by M. W. Savage, Esq. In two volumes. London: Hurst & Blackett, 1855.*

THESE volumes consist of the principal contributions of the late Mr. Sheil to the *New Monthly Magazine*, whilst edited by Thomas Campbell. The papers comprise, 1st, Sketches of the Irish Bar; and 2nd, Political Sketches.

The subjects of the Legal Sketches are:

Mr. Bushe.  
Mr. Saurin.  
Mr. Joy.  
Lord Norbury.  
The Catholic Bar.  
Mr. Bellew.  
Mr. O'Loughlin.  
Mr. Leslie Foster, and the Louth Election of 1826.

Mr. Leslie Foster, as a Barrister, Scholar, and Commissioner of Education.

Calamities of the Bar.  
Diary of a Barrister.  
Burning of the Sheas.  
Farewell of Lord Manners.  
The Murder of Holycross.  
Observations on Agrarian Crime.  
Notes upon Circuit.

The Political Sketches are as follow:—

State of Parties in Dublin.  
The Catholic Deputation.  
The Tabinet Ball.  
The Hohenloe Miracle; or, the Exorcism of a Divine.

The Clare Election—Preliminary Proceedings.

The Clare Election—the Court House and the Poll.

The Clare Election—O'Connell Returned.  
Catholic Leaders and Associations.

Penenden Heath,  
Effects of Emancipation.  
Recollections of the Jesuits.  
Zoology in Dublin.  
Irish Elections.  
Mr. Stanley in Ireland.

We are informed that the publication of these Sketches at the present time has been occasioned by their unauthorised re-appearance in America, and by the pirated edition, containing many inaccuracies. At this distance of time it will not be expected that we should review many of the articles comprised in the work, but we make the following extract from Mr. Sheil's *Notes upon Circuit* in a case at Kilkenny:—

"In the Criminal Court, a conviction of three men for the murder of a man of the

name of Devereux, afforded an illustration of the moral condition of the peasantry, and one of the instances in which murder is at last overtaken by a slow but certain retribution. Devereux took a few acres of land from which the prisoners at the Bar had been ejected. It was resolved that he should die; sentence having been pronounced upon him by the secret tribunal, which Captain Rock has established for the redress of wrongs, which are not only not cognizable, but are produced in the imagination of the lower orders by the law. Devereux was aware that his head had been devoted. He never slept out of the town of Callan, which was at three miles distance from the farm, and always walked with arms about him.

"However, the ministers of agrarian vengeance were not to be frustrated. A day was fixed for his immolation. The whole country was apprised of it. As he was walking in the broad light in his fields, one of his labourers engaged him in conversation, and at the corner of a hedge three men rushed on him, when his companion pinioned his elbows behind his back, in order to prevent him from drawing the pistol which he endeavoured to grasp, and, beating his forehead in, left him dead upon the ground. The whole scene was observed by a woman, who was aware that the murder was to be perpetrated, and went out for the purpose of seeing the spectacle. She was induced, by the reward offered by Government, to give information, on which the executioners of Devereux were hanged. Devereux was himself a bad and bloody man, and at the trial it was stated by one of the witnesses for the prosecution that he had, many years before, committed a murder. The question was not pursued, and whom he had murdered I did not at the moment learn.

"Upon the day appointed for the punishment of the men who had taken his own life away, I left Kilkenny for Clonmel. It was a bright and cheerful day. The very breathing of the air under a cloudless sky, and in a delightful temperature, seemed to intimate the value of existence, and gave to the consciousness of a light and unburdened vitality a great charm. It was a day which should scarce have been selected for the ministry of death. As I advanced, I observed crowds of people assembling in various directions, and climbing upon hedges, where women and girls as well as men, were seen straining upon tiptoe, in order to catch a glimpse of some object by which they seemed to be singularly attracted. On looking towards the gaol, I perceived in the rope which was depending from the pulley to which it was attached, and in the rest of the apparatus of justice, the motives of this intense curiosity. The murderers of Devereux were about to die. I saw the door of the prison leading to the stage on which they were to perform a part that appeared to be likely to engage the sympathies of the spectators, open, and presently the iron balcony was occupied by the figures of the doomed and of the executioner. This was sufficient for the gratifica-

tion of any love of this kind of excitation which I may happen to possess, and turning from the frightful spectacle, I desired the driver, who obeyed the order with some reluctance, to push on.

"We were soon out of sight of this painful scene. I fell into conversation with the postillion, who was continually turning back to catch a parting view of the catastrophe; and from him I learned, what I afterwards inquired about and found his statement confirmed, that Devereux, upwards of twenty-five years before, had imbrued his hands in blood. He had joined in the conspiracy of the unfortunate Robert Emmet. The insurgents rushed into Thomas Street, and advanced towards the Castle, scattering dismay before them. They met a carriage, which they stopped. Some of the crowd exclaimed, 'It is Lord Norbury!' That instant the door of the carriage was burst open, and, while the unhappy gentleman inside it exclaimed, 'No, I am your friend, Lord Kilwarden,' the hand of Devereux drove a pike through his heart."

#### SALARIES OF THE COUNTY COURT JUDGES.

We propose now to complete our extracts from the correspondence which has taken place with the Home Secretary and the Lords of the Treasury, regarding the Salaries of the County Court Judges. Mr. Serjeant Jones thus proceeds to address Lord Palmerston, and to complain of the delay which has interposed a fresh proof that the services of the Judges, which have met with the approval of the public and public men of all parties, and which have tended to insure the success of the greatest of all modern legal reforms, under circumstances most adverse to success, continue to be undervalued by the Government alone.

"I do feel (says the learned Judge) that perfect reliance in your lordship to confide implicitly in your recent declarations, that it is only necessary to bring under your lordship's notice that which requires redress in order to terminate a state of things which it seems incredible should have been permitted so long to endure; the remedy rests with your lordship: the Treasury are invested with no control over the subject which is not equally shared with your lordship. Your lordship may rest assured that these tribunals characterised by Lord Denman as the Courts of general resort, in whose favour the voice of the nation has unequivocally proclaimed a preference by the transfer to them of the greater portion of the business of the Superior Courts of Westminster Hall, have taken too deep a root and have become too intimately interwoven with the best interests of the country, not only in having realised the long sought-for desideratum of bringing cheap and speedy justice to every man's door, but in the more

important respect of promoting principles of honesty, frugality, and self-reliance among the great body of the people, to be any longer exposed with impunity to the invidious treatment they have experienced. In the year 1851 there were no less than 441,584 plaints entered for sums amounting to 1,624,916*l.*, of which 618,468*l.* were received during the same year to the credit of the suitors, and 615,181*l.* were actually paid over to them, a great proportion of which would never have been recovered and realised but for the institution of these tribunals. During the same year 272,500*l.* were received in fees alone, 83,970*l.* of which were levied from the suitors in the Judges' names, though 60,000*l.* only were paid to the 60 Judges for salaries, while the salaries paid out of the public treasury to the 15 Judges of the three Common Law Courts at Westminster amount to 82,000*l.* annually. Bearing in mind that the former are for the most part resorted to by suitors from the middle and lower rank of society, it becomes a question of great importance how far it is desirable or expedient, or even right, that so vast and disproportioned a difference should exist between the compensation of their Judges, and that freely given to those who preside over the Courts of the higher and wealthier suitors—a difference not calculated to raise the former in public estimation, or to render the appointments objects of ambition to men of that high character and professional eminence by whom alone the extended and altered nature of the jurisdiction and the importance of the tribunals require that the offices shall be filled.

"The degree in which the Judges of the County Courts may have been instrumental in conducing to this wonderful result may be in some measure collected from the following facts:—1st. In 1851, out of 233,646 causes tried, 879 only were tried before juries. 2nd. That although in the same year there were 8,236 causes tried above 20*l.* and not exceeding 50*l.*, there were only 38 appeals, of which number eight only of the County Court Judges' decisions were reversed, 11 were confirmed, 13 were dropped, at the date of the return six had not been decided; a result which those who undervalue those tribunals will do well to compare with the number of motions made annually in the Courts of Westminster for new trials, &c., on the grounds of misdirection or the improper admission or rejection of evidence in the comparatively insignificant number of causes tried before the Judges of the Queen's Bench, Common Pleas, and Exchequer.

"Without entering upon the question whether the system of supporting these institutions out of funds levied from the suitors themselves, while all other Judges and legal functionaries are supported by the State, can be justified on sound principles, I must ever maintain that so long as this distinction prevails, and the Judge's fees levied annually from the suitors of my district are abundantly sufficient to admit of the Government awarding to the Judge out of his own earnings the full salary allowed

by law with a considerable surplus in favour of her Majesty's Treasury, justice and sound policy alike require that the sum paid to him should be less disproportionate as when to his labours as to the amount of fees exacted from the suitors for that purpose, and more commensurate with the remuneration given to other legal functionaries out of the public purse.

"Reduced by income-tax and other expenses, my salary does not net 1,100*l.* Unlike all other Courts we have no vacation, but are compelled to sit every month, to secure therefore that exemption from toil required occasionally by every one, and whenever prevented from sitting by illness or other unavoidable cause, we are compelled to provide a deputy, and in the Metropolitan Courts, that deputy must be able and experienced; thus a heavy burden is imposed on the Judges of these Courts wholly incompatible with the minimum rate of salary.

"As candour in stating a grievance is as essential to the complainant as it is due to the party from whom redress is sought, I think it right to state that a strong feeling prevails that in estimating claims preferred by the different branches of the Profession, those advanced by the subordinate class are uniformly met by the Government in a more liberal spirit than evinced to the higher grade, and in illustration of this I would point to the very different scale lately adopted in assessing the salaries given to the several clerks of the peace in substitution for the fees formerly received by them.

"One other illustration of the treatment we have experienced, and I have done. Some months ago the Judges received a circular from the Audit Office, requesting them to forward the instruments by which they had been appointed, in order that they might be registered, with an assurance that they should be immediately returned. Your lordship will be surprised to hear not only that no such registration is necessary, but further, that instead of so returning them, the Treasury have made that proceeding the basis of a demand that the Judges shall have a 75*l.* stamp affixed to such instruments, as they severally received most of them more than six years ago, and pay a penalty of 10*l.* for the delay, no written appointment being required by law, and no stamp requisite even where the appointments had been originally in writing.

"In conclusion, I beg to offer every apology for the unavoidable length of this letter. I sincerely hope, if I may be permitted to adopt the forcible and expressive language employed by your lordship, that in the hushel of chaff thus tendered for winnowing, your lordship may find a pint of good corn, which may produce to myself the salary to which I respectfully contend I have been entitled since the passing of the last Act, and yield to your lordship fruit a hundred fold in the satisfaction of having 'set that which was wrong, right.'"

After several letters between the Secretary to the Treasury, the Secretary to the County

Court Commissioners, and the Lord Chancellor's Secretary, from February to October, 1854, the following Treasury Minute was issued, dated 6th October:—

"My Lords resume the consideration of the claims of the different circuits of County Courts to the maximum salary authorised by the provisions of the Act 15 & 16 Vict. c. 54.

"It appears to their lordships, that in whatever light the duties of County Court Judges may be looked at, it is obvious that the amount of labour and responsibility is very different in the different circuits. The difficulty in determining which of the circuits were entitled to the maximum salary has been in arriving at an entirely satisfactory mode of discriminating between the importance of the different circuits; but my lords, after mature deliberation, have come to the conclusion that the labour and responsibility attached to each circuit should be measured by the amount and importance of the judicial work performed.

"The statement annexed to this minute shows the claims entered, the causes tried, the Judges' fees, and the amount sued for, in each circuit for the years 1852 and 1853, and the average for such years, and these elements of the business done in the Courts having been aggregated in each circuit, as the best test which my lords can adopt, the different circuits stand in relation to each other in the following order with reference to the aggregate amount of such elements in each, viz.:—

No. Circuit.

- 1 — 8, Manchester.
- 2 — 45, Westminster.
- 3 — 6, Liverpool.
- 4 — 44, Brompton, Marylebone, and Brentford.
- 5 — 41, Shoreditch and Bow.
- 6 — 48, Greenwich, Woolwich, and Lambeth.
- 7 — 13, Sheffield and 5 other Courts.
- 8 — 14, Leeds, Wakefield, Dewsbury, and Pontefract.
- 9 — 7, Cheshire and Lancashire.
- 10 — 25, Dudley, Walsall, Oldbury, and Wolverhampton.
- 11 — 47, Southwark.
- 12 — 43, Bloomsbury.
- 13 — 42, Clerkenwell.
- 14 — 12, Halifax.
- 15 — 40, Whitechapel.
- 16 — 30, Brecknockshire and Glamorganshire.
- 17 — 21, Birmingham, Atherstone, and Tamworth.
- 18 — 9, Cheshire and Derbyshire (parts of).
- 19 — 51, Brighton, and 11 other Courts.
- 20 — 2, Durham, and 9 other Courts.
- 21 — 19, Derby, and 8 other Courts.
- 22 — 52, Southampton, and 10 other Courts.
- 23 — 1, Newcastle, and 11 other Courts.
- 24 — 55, Bristol, Thornbury, and Sodbury.
- 25 — 16, Hull, and 10 other Courts.
- 26 — 11, Bradford, Keighley, Otley, Settle, and Skipton.

No. Circuit.

- 27 — 24, Herefordshire, Monmouthshire, and Radnorshire (13 Courts in).
- 28 — 4, Lancaster, and 8 other Courts.
- 29 — 5, Lancashire (6 Courts in).
- 30 — 23, Worcester, and 11 other Courts.
- 31 — 38, Hertford, Edmonton, and 10 other Courts.
- 32 — 10, Bury, Haslingden, Rochdale, Oldham, and Saddleworth.
- 33 — 54, Cheltenham, and 11 other Courts.
- 34 — 26, Staffordshire (10 Courts in).
- 35 — 49, West Kent (9 Courts in).
- 36 — 20, Leicester, and 9 other Courts.
- 37 — 22, Warwick, and 11 do.
- 38 — 3, Carlisle, and 12 do.
- 39 — 52, Bath and 11 do.
- 40 — 37, Oxford and 12 do.
- 41 — 34, Peterborough, and 11 do.
- 42 — 57, Taunton, and 12 do.
- 43 — 58, Exeter, and 8 do.
- 44 — 35, Cambridge, and 11 do.
- 45 — 18, Northampton, and 5 do.
- 46 — 46, Wandsworth, and 9 do.
- 47 — 17, Lincoln, and 10 do.
- 48 — 27, Shrewsbury, and 10 do.
- 49 — 15, York, and 11 do.
- 50 — 32, Norwich, and 8 do.
- 51 — 33, Bury St. Edmunds, and 11 do.
- 52 — 36, Northampton, and 6 do.
- 53 — 50, Canterbury, and 12 do.
- 54 — 39, Chelmsford, and 11 do.
- 55 — 60, Redruth, and 8 do.
- 56 — 56, Salisbury, and 11 do.
- 57 — 59, East Stonehouse, and 8 do.
- 58 — 29, Denbigh, and 11 do.
- 59 — 28, Bangor, and 11 do.
- 60 — 31, Carmarthen, and 11 do.

"My lords are of opinion that the first 15 circuits in this list should have attached to them salaries of 1,500*l.* a year, the maximum amount authorised by the Act.

"My lords observe, as a satisfactory coincidence somewhat confirmatory of the test adopted being a fair one, that it appears that in every one of the 15 circuits to be given the maximum salary, the average Judges' fees of the last two years have exceeded 1,500*l.*, while in no instance in any other of the circuits have they reached that sum. At the same time my lords do not wish it to be understood that they would have regarded these facts as satisfactory by themselves.

"Write to the Hon. H. Fitzroy, in answer to his letter of the 17th of October, 1853, transmitting to him, for the information of Viscount Palmerston, a copy of this minute, and request that he will move his lordship to favour this Board with his opinion thereon, and if it is favourable to express his consent thereto, as required by the 7th section of 13 & 14 Vict. c. 61."

Next came the following letter from the Home Office to Mr. Wilson, the Secretary of the Treasury, dated October 11, 1854:—

"I have laid before Viscount Palmerston

your letter of the 5th instant, transmitting with reference to the application made by Mr. Serjeant Jones, Judge of the Clerkenwell County Court, circuit 42, for the maximum salary of 1,500*l.*, allowed by the Act, a copy of a minute of the Treasury Board upon the claims of the Judges of the different circuits to the maximum salaries. And I am to acquaint you, for the information of the Lords Commissioners of her Majesty's Treasury, that Lord Palmerston has no doubt the arrangement stated in the four columns of the paper inclosed in your letter, form, as far as they go, elements by which to estimate the relative labour of the several circuits to which those tables apply; but it is to be observed that, if the object is to class the circuits according to the labour imposed upon each Judge, and the time employed by him in the performance of his duties, there is another element to be taken into account, which is not included in those tables, and that is the distances to be traversed by each Judge in the course of the year, in the performance of his duties, and the bodily fatigue attendant upon his journeys; and his lordship apprehends that, if a comparative table were made out in regard to that matter, it would be found that some of the circuits which stand the worst by the average of the four elements, would stand among the highest by the average of the fifth element. It must also be borne in mind, that recent Acts of Parliament have thrown upon the County Court Judges various duties which are not measured by the averages of the four elements of the Treasury tables, but which ought also to be taken into account in estimating the aggregate duties and labours of those Judges. In fact, the tendency of recent legislation has been to make progressively, more and more use of those Courts, and the current of public habit seems to have produced a steady increase in the business of those County Courts, as is shown by the tables of the number of plaints preferred and of causes tried in 1852 and 1853.

"But there is, in regard to those matters, a further consideration, which does not turn upon the fluctuations of business in those circuits, and that is the qualification requisite for filling those offices. No man ought to be made a Judge of a County Court who does not possess a considerable amount of general information and of legal knowledge, and who does not belong to a sufficiently respectable class of society; and persons so educated, so qualified, and so placed in point of social position, must maintain certain appearances which cannot be sustained without a certain degree of expense; and the general interests of society require that men charged with the administration of justice should be able to maintain a due respectability of outward condition.

"Taking all these things into consideration, Lord Palmerston is much inclined to think that the rule proposed by the Treasury is far too narrow, and that the maximum salary ought to be much more extensively granted, if

indeed it should not be extended to all these Judges.

(Signed) "HENRY FITZROY."

From Mr. Wilson's letter from the Treasury, of 17th October, to the Home Office, we extract the following:—

"My lords had given the most careful consideration to the extent of the travelling and the number of days of sitting of each Judge, and had statements carefully prepared to show all those points. But after the most mature consideration, it appeared to my lords that the importance of particular Courts should be considered mainly, if not exclusively, in relation to the extent and the character of the judicial duties attached to them as the best indications of the legal and mental qualifications required for them, and not by the physical labour beyond the performance of judicial duties attending them, which cannot in any case be considered extreme. There are many of the most important Courts, such as Liverpool, Manchester, and those of the metropolis, where business of the highest class is transacted, and to which no travelling is attached; while in the thinly populated rural districts, where there is most travelling, the business is of a much more insignificant class, as is shown by the average amount for which plaints are entered, and where the judicial business is of an aggregate extent extremely small when compared with some of the others to which their lordships have alluded; and my lords are clearly of opinion, therefore, that there are ample grounds for making a distinction in the emoluments of some of the highest Courts.

"My lords entirely concur with Lord Palmerston in the view expressed by his lordship as to the qualifications and social position which it is desirable Judges of County Courts should possess, but they are not able to discover any grounds for believing that the proposed salaries will not be found sufficient to command a suitable body of Judges, as may be seen from the character and standing of those who freely accept the appointment when vacancies occur.

My lords, therefore, see no reason, at present for enlarging the number of Courts to which the maximum salary should apply. This addition will be a large charge upon the County Court Fund, and such an increase as would take place if the whole were raised to the maximum, would be such as the fund could not bear, while such a course would again establish an uniformity in the emoluments of the most important, and the least important of the different circuits, which would not be just to the former.

On the 25th October, Lord Palmerston signified his approval of the salaries of the fifteen Judges of the circuit first named in their minute of the 6th instant being increased to the maximum of 1,500*l.* a year.

A Treasury Minute was also issued, dated 30th January, 1855, to the following effect:—

"My lords have under their consideration various memorials from County Court Judges who were not included in the list of those to whom the maximum salary of 1,500*l.* a year was given, under a minute of the 27th October last; and also a memorial signed by a large number of those Judges in a body.

"Upon the general statements contained in these memorials, my lords would observe that the memorialists appear to proceed upon a misapprehension of the grounds on which their lordships had come to their former decision; nor is there anything in those general statements which my lords can regard as a sufficient reason to disturb the arrangements then made.

"My lords have, however, carefully considered the memorials from individual Judges, and also the circumstances which any one Judge may have stated as being specially applicable to his case.

"In the case of Mr. Trafford, the Judge of the Birmingham Court, it appears that, since the time to which the calculations applied upon which the decision of my lords was taken, the Mayor's Court at Birmingham, and another rural Court within the Circuit, have been abolished, which has led to such an increase of business as, in the views of my lords, entitle him to the maximum salary.

"My lords have especially examined into the several claims which have been made in relation to insolvency prison business. With the exception of three Judges, it appears that the largest number of these insolvency cases which any Judge disposed of in 1854, was 41. The exceptions referred to are:—

"Mr. Addison, who disposed of 714 cases.  
"Mr. Serjeant Dowling, who disposed of 294 cases.

"Mr. Dinsdale, who disposed of 123 cases.

"Referring to these facts and to the amount of other business performed by Mr. Addison and Mr. Serjeant Dowling, my Lords are of opinion that they also are entitled to the maximum salary of 1,500*l.*

"Referring to the amount of insolvency prison business done by Mr. Dinsdale, which is three times more than that done in any other circuit, except the two just named, and referring also to the position in which he stands in relation to his other business, my lords are of opinion that he is entitled to an intermediate salary of 1,350*l.*

"My lords also refer to the case of Mr. Furner of the Brighton Circuit, to whom, for the public convenience, a new Court out of his original district, and distant 60 miles from the centre of his district, has been established, and referring also to the position which he otherwise holds in relation to other circuits, my Lords are of opinion that he is entitled to the same intermediate salary of 1,350*l.*

"My lords have given very careful consideration to the claims which, apart from any

other special circumstances, have been made on account of increasing business. My lords are prepared to admit that this is an element which cannot in future be lost sight of, but that any increase of the kind which applies to only one, or even two years, would not be sufficient to justify a change; and that, before an increase of the salary of any Judge should take place on this ground, it should appear that the requisite increase of business to justify it has extended over an average of at least the preceding three years."

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

*Major Assent.*—March 16, 1855.

Common Law Procedure (Ireland).

### House of Lords.

Dispatch of Chancery Business. — Lord Chancellor. In Committee, March 23.

Ecclesiastical Courts Jurisdiction for Defamation.—In Committee, March 27.

Speedy Trial of Offenders—Lord Brougham. In Committee.

### House of Commons.

Executor and Trustee Society. In Committee.

Public Prosecutors and District Agents.—Mr. J. G. Phillimore. For 2nd reading, March 28.

Episcopal and Capitular Estates. In Committee, May 23.

To Amend the Law of Partnership—Mr. Cardwell.

Bills of Exchange and Promissory Notes—Mr. Keating. For 2nd reading, March 28.

Bills of Exchange Registration. For 2nd reading, March 28.

Nuisances' Removal. In Select Committee.

Passengers by Sea Regulation—Mr. Peel. In Committee, March 23.

Metropolitan Local Management—Sir B. Hall. For 2nd reading, April 16.

Public Health—Sir B. Hall. In Select Committee.

Education.—Sir J. Pakington. For 2nd reading, March 12.

Personal Estates Distribution.—Mr. Locke King. March 20.

Criminal Justice.—For 2nd reading, Friendly Societies. In Committee, March 27.

Court of Chancery, Ireland (five Bills)—Mr. Whiteside. For 2nd reading, March 28.

Intestacy (Scotland).—Mr. Dunlop. For 2nd reading, April 18.

## NOTES OF THE WEEK.

### RESULT OF HILARY TERM EXAMINATION.

We omitted last Term to state the result of the Examination of Articled Clerks at the Incorporated Law Society. Several who gave

notice did not complete their testimonials of due service; and the number entitled to be examined was only 32.

|   |    |
|---|----|
| Of these, were absent . . . . .           | 6  |
| Withdrew during the Examination . . . . . | 2  |
| Passed . . . . .                          | 69 |
| Postponed . . . . .                       | 5  |

The Examiners were Master Templer, of the Court of Exchequer, Mr. Frere, Mr. Maynard, Mr. Ranken, and Mr. Williams.

#### COSTS AT THE EQUITY JUDGES' CHAMBERS.

In referring to the additional costs allowed in special matters under the order of 2nd February, 1855, not exceeding 10*l.* 10*s.*, in lieu of the former sum of 1*l.* 1*s.*, an error was made at page 371, in the date of the previous order, which should be 23rd October, 1852.

#### LAW APPOINTMENTS.

THE Queen has been pleased to appoint *Charles Fisher, Esq.*, to be Attorney-General,

and *John Mercur Johnson, jun., Esq.*, to be Solicitor-General and Members of the Executive Council for the Province of New Brunswick.

Her Majesty has also been pleased to appoint *Antonio Micallef, Esq., C.M.G.*, one of her Majesty's Judges for the Island of Malta, to be a Member of the Council of Government of that Island—From the *London Gazette* of March 16.

Mr. *George Spilbury*, solicitor, has been appointed Clerk of the Stafford County Court (Circuit No. 26), in the room of Mr. *Thomas Edye*, resigned.

Messrs. *M. Hume* and *E. D. Maddy* have been appointed First Clerks, and Messrs. *F. Drake, W. Walter*, and *R. G. Harwood*, have been appointed Third Class Clerks in the Charitable Trust Commission.

Mr. *Henry Gordon* has been appointed Sheriffs' Clerk of Dumfriesshire.

The Queen has been pleased to appoint the Right Honourable Sir *John Young, Bart.*, Barrister-at-Law, to be her Majesty's Lord High Commissioner in and for the United States of the Ionian Islands.—From the *London Gazette* of March 20.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

#### Lords Justices.

*In re Fozard's Trust.* March 16, 1855.

#### TRUSTEES' RELIEF ACT.—JURISDICTION ON PETITION UNDER.—LEAVE TO FILE BILL.

*On the marriage of an infant, her property to which she was entitled under the marriage settlement of her father and mother as tenant in common in tail, was settled, but on her second marriage no settlement was made. The property was afterwards sold, and a declaration of the trust was made in accordance with the settlement, but neither she nor her husband executed it. On payment of the fund into Court under the Trustees' Relief Act, held that a declaration of the rights of the parties could not be made without the consent of her and her husband, and on their refusal a bill was directed to be filed.*

It appeared that upon the marriage, in 1790, of an infant, who was entitled under the marriage settlement of her father and mother to a share in certain real estate as tenant in common in tail, a settlement of such property was made, but that none was made on the death of her husband and second marriage, although still a minor. The property was afterwards sold, and a fine levied, and a declaration of trust so far as regarded her share was made whereby it was declared to be held on the trusts of the settlement, but neither she nor her husband executed the deed. The money having been paid into Court under the 10 & 11 Vict. c. 96, this petition was pre-

sented under that Act, and the question arose, whether the fund was subject to the settlement, or passed to her as tenant in tail absolutely. The Vice-Chancellor Wood having held that she took absolutely (reported 1 Kay & Johnson, 233), this appeal was presented.

*Willcock* and *W. D. Lewis* in support; *Roll* and *Browell*, contra; *Buchanan* for other parties.

The Lords Justices said, that they had no jurisdiction to determine the question on the petition unless with the consent of the appellants, and on their refusing to consent, the case was directed to stand over in order to file a bill.

#### Master of the Rolls.

*Hatch v. Hatch.* March 14, 15, 1855.

#### WILL.—CONSTRUCTION.—SUCCESSIVE DEVISE OF PRESENTATION TO RECTORY.

*A testatrix by will devised the presentation to a rectory to her son Henry upon his obtaining a qualification to assume holy orders, and in default of his obtaining no such qualification, then the presentation should vest in her son Charles, and if he should not be qualified then to her third son Thomas. Neither Henry nor Charles were qualified, and Thomas died, having left his interest to his son: Held, on special case, that such son was entitled.*

THIS was a special case, from which it appeared that the testatrix, Mrs. Hatch, by her will devised the presentation to the rectory of Sutton, in the county of Surrey, to her son



Henry upon his obtaining a qualification to assume holy orders, and if he obtained no such qualification, then that the presentation should vest in her son Charles, and if he should not be qualified then to her third son Thomas. Neither Henry nor Charles were qualified, and Thomas devised his interest in the presentation to his son Henry John, who was now in possession.

*Lloyd, R. Palmer, Faber, A. Smith, and Bristowe*, for the several parties.

The *Master of the Rolls* said that the devise was a successive devise to the three sons, and that after that to Henry and Charles had taken effect and been satisfied, it would go to Thomas, who had bequeathed his successive interest to his son, who was therefore entitled.

#### Vice-Chancellor Kindersley.

*Yeates v. Roberts.* March 6, 1855.

FRIENDLY SOCIETY.—EXPULSION OF MEMBERS.—DELIVERY UP DEPOSIT NOTES TO TRUSTEES.

*Under one of the rules, which were registered and duly certified under the 13 & 14 Vict. c. 115, s. 13, of an odd-fellows' district lodge, it was provided that if any member made default in paying his subscription he should be first fined 1s., next suspended, and finally expelled. Upon disputes having arisen between the members, the defendant and others refused to pay their subscriptions, and were expelled under the above rule: Held, that the plaintiffs who were appointed trustees were entitled to recover from the defendant the deposit notes which were in his hands as secretary and grand-master, independently of the question as to the legality of the expulsion.*

It appeared that by one of the rules of a district odd-fellows' lodge called the Briton's Lion Lodge, and which were registered and duly certified under the 13 & 14 Vict. c. 115, s. 13, it was provided that if any member should make default in the payment of his subscriptions he should first be fined 1s., next suspended, and finally expelled. Disputes afterwards arose between the members, and the defendant and others refused to pay their subscriptions, and were expelled under the above rule, and the defendant refused to deliver up to the plaintiffs, who had been appointed trustees, certain deposit notes for moneys paid from time to time into Messrs. Attwood and Spooner's bank at Birmingham, and which were in his possession as secretary and grand-master, until the question of the propriety of the expulsion were determined, whereupon the plaintiffs filed this bill to obtain the same.

*Selwyn and Osler* in support, citing *Hodges v. Wale*, W. R., 1853-4, p. 65.

*Glasse and Pownall* for the defendant.

The Vice-Chancellor said that the plaintiffs were clearly entitled to receive the notes, and a decree was made accordingly, with costs.

*Other v. Iveson.* March 14, 1855.

BANKER.—ADVANCE ON JOINT CHEQUE.—RIGHT AGAINST ESTATE OF A DECEASED DRAWER.

*It appeared that on A. and T. being desirous of borrowing money from a bank, the loan was refused, unless W., their brother, joined in drawing the cheque, and which he accordingly did. Upon W.'s death, held that the bank could not treat the debt as several and charge his estate therewith, but that it was joint, and the survivors H. and T. alone were liable.*

It appeared that on Mr. Arthur and Mr. Thomas Iveson being desirous of borrowing a sum of 500*l.* from the Swaledale and Wensleydale Banking Company, the bank refused to make the advance unless their brother William joined in the cheque, which he accordingly did on June 2, 1848, in the ordinary form. William afterwards died, and the bank now filed this bill, by their public officer, seeking to charge his estate with the debt, on the ground that the security was joint and several.

*Glasse and Fleming* for the plaintiff; *Baily and Birkbeck* for the trustees; *Whiteley* for the executors.

The Vice-Chancellor said, that the case of *Thorpe v. Jackson*, 2 Y. & C. Exch., 553, which had been cited, did not support the proposition that bankers or any person lending money to three individuals on their joint cheque, note, or bond were entitled *simpliciter* to bring a separate action against one, precisely as if the security had been in express terms joint and several. The estate of William was therefore not liable, and the bill would be dismissed in that respect with costs, and as against Arthur and Thomas Iveson, without costs.

*Houlding v. Cross.* March 15, 1855.

WILL.—CONSTRUCTION.—FAILURE OF GIFT OF FURNITURE, &c., IN SPECIFIC HOUSE, BY SUBSEQUENT REMOVAL.

*A testator, by his will, after describing himself as of "Bromfield Place, Ealing, in the County of Middlesex," gave inter alia to his wife for life, all the household furniture, &c., and other articles and things which should be either upon or about his "said dwelling-house" and belonging to him at the time of his decease. He afterwards removed to Battersea, where he died: Held, on special case, that the gift thereby failed.*

THIS was a special case for the opinion of the Court, from which it appeared that the testator, John Houlding, by his will, which commenced describing himself as of "Bromfield Place, Ealing, in the county of Middlesex," gave (*inter alia*) to his wife for life, all the household furniture, plate, &c., and other articles and things which should be in, upon, or about his "said dwelling-house," and belong to him at the time of his decease. The testator afterwards removed to Battersea, where

he died; and the question arose whether the gift of the furniture, &c., failed.

*Hemings for the wife.*

The Vice-Chancellor (without calling on Harrison for the executor) said, that the gift failed on account of the removal, as the word *said*, which referred to the furniture in the house at Ealing, could not be rejected.

**Vice-Chancellor Stuart.**

*Andrew v. Andrew.* March 14, 1855.

WILL.—REVOCATION BY SUBSEQUENT CONTRACT OF SALE.—REFERENCE TO CHAMBERS.

*A testator contracted to sell certain estates, and a deposit was paid, and the purchaser entered into possession, but on the death of one intestate, leaving the other his heir-at-law, and such other becoming bankrupt, his assignees gave notice that they repudiated the contract. The estates were sold by order of the Bankruptcy Court, and the testator purchased, proving under the fiat for the difference in price. It appeared he had, by will dated October, 1832, devised estates, including those contracted for sale to the plaintiff, who filed a bill to administer the trusts of the will: Held, that as the Master found the contract of sale to be binding, the will was revoked, and a reference was directed to Chambers as to the estates included in the contract of sale.*

THE testator, Thomas Andrew, entered into a contract in writing in August, 1835, to sell certain real estates in Lancashire to Messrs. Henry and Aaron Lees, who paid 100*l.* as a deposit, and entered into possession. Mr. H. Lees died in 1836, intestate, leaving his brother Aaron his heir-at-law, who became bankrupt in December, 1837. The assignees gave notice to the testator that they abandoned all interest under the contract of sale, and the property was put up to public auction under the order of the Court of Bankruptcy, when the testator became the purchaser at the price of 4,600*l.*, and proved under the fiat for the difference of the former price. It appeared that the testator had, in December, 1832, devised the estates in question, with others, to the plaintiffs, who now filed this bill to have the trusts of the will administered.

*Bacon, Elmsley, Elderton, and Torriano for the plaintiffs; Craig and Hall for the executor; Malins and J. H. Palmer for the heir-at-law.*

The Vice-Chancellor said, that the only material question on the facts found by the Master was, whether the contract of sale made by the testator in August, 1835, after the publication of his will, revoked the devise of the estates in question. It was found by the Master that the contract was a binding one, and that was conclusive as to the revocation. A reference would therefore be directed to Chambers to ascertain what estates were included in such contract of sale.

**Vice-Chancellor Wood.**

*Hinde v. Poole.* March 14, 1855.

MORTGAGE OF REAL ESTATES TO FIRM ON ADVANCES ON JOINT ACCOUNT.—SALE UNDER POWER.—TITLE BY SURVIVOR.

*Certain real estate was mortgaged to T. H. and W. H., their heirs and assigns, to secure a sum of money advanced by them on a joint account, and it was provided that in case of default of payment it should be lawful for them, their heirs or assigns, to sell—the receipt of them their heirs, executors, administrators, or assigns, to be a sufficient discharge to the purchaser. It was also declared by them that the money was advanced on a joint account, and that if either should die while all or a part of the principal or interest should be owing, the receipt of the survivor, his executors, and administrators, should be a sufficient discharge. On the death of one, and upon default being made, held that the survivor could show a good title on a sale by auction.*

By a mortgage deed, certain real estates were conveyed to Thomas Hinde and William Hill, their heirs and assigns, to secure a sum of money advanced by them on a joint account, and it was provided that in case of default being made in payment, it should be lawful for them, their heirs or assigns, to sell—the receipt of them, their heirs, executors, administrators, or assigns, to be a sufficient discharge to the purchaser. The deed also contained a declaration by them that the money was advanced on a joint account, and that if either should die while all or a part of the principal sum or interest should remain due, the receipt of the survivor, his executors, and administrators should be a sufficient discharge for the same. It appeared that Hill died in 1847, and that upon default having been made, the plaintiff had put up the property to sale by auction, when it had been purchased by the defendant. A question having arisen whether the plaintiff could make out a good title, this special case was filed to take the opinion of the Court.

*Rolt and R. Hawkins for the plaintiff; De Gez for the defendant.*

The Vice-Chancellor said, that there was a sufficient inference on the face of the deed that the power of sale should pass to the party entitled to receive the money. The whole legal dominion over the property was given to the mortgagees jointly, and the money advanced belonged to a joint account, and therefore the survivor had the same liberty of dealing with and passing the estate as the two jointly had, and he therefore was entitled to exercise the power of sale.

*Wood v. Grazebrook.* March 15, 1855.

SPECIFIC PERFORMANCE OF CONTRACT.—ENTRY INTO POSSESSION.—ACCEPTANCE OF TITLE.

*The purchaser of an estate was in receipt of*

*the rents at the time as receiver, and after receiving back from the vendors answers to his requisitions on the abstract of title delivered, he wrote that he should retain the current rents as purchaser, and he also sent a subsequent letter that he should submit a case to counsel as to the conveyance, but without referring to the title: Held, that the title had been accepted, and a decree was made for a specific performance, with interest and costs.*

It appeared in this suit to enforce the specific performance of a contract of purchase, that the defendant was at the time in receipt of the rents of the estate as receiver, and had paid over to the plaintiffs from time to time their respective shares. An abstract of the title was delivered, on which the defendant made requisitions to which replies were given, and he then, in answer to an application for the current rents, wrote back that he should retain them as purchaser. It further appeared that he had subsequently written, stating he should submit a case to counsel on a point relating to the conveyance, but without referring to the title.

*Willcock and De Gea* for the plaintiffs; *Roll and Shebbeare* for the defendant.

The Vice-Chancellor said, that the retaining of the rents by the defendant amounted to an entry in possession, and that the letter which was afterwards sent, only raising a question as to the conveyance, showed that the title had been accepted, and there would be a decree for a specific performance, with costs and interest.

*Bartlett v. Salmon.* March 16, 1855.

**CONTRACT TO PURCHASE UNDER-LEASE AT MODERATE GROUND-RENT.—UNDUE HASTE.—ANNULLING.**

*The plaintiff had applied to the defendant in consequence of an advertisement for the sale of leasehold property at a moderate ground-rent, and on an appointment to meet his clerk he signed an agreement which was produced by the clerk and which specified a ground-rent of 50*l.*, whereas that paid by the defendant was 24*l.* only. It appeared that this was the full value without any premium, and that the plaintiff gave 5*l.* and his I O U for 69*l.* as deposit: Held, that there was such haste as to show that the plaintiff had been entrapped into signing; and the agreement was annulled with costs.*

THIS was a suit to annul a contract entered into by the plaintiff for the purchase by private contract of an underlease of six houses at Mile-end, and which were represented by the advertisement, in consequence of which he applied, to produce a yearly rental of 130*l.*, the lease being for nearly 80 years at a moderate ground rent, and the price was to be 420 guineas. The plaintiff met the defendant's clerk, and, after viewing one of the houses, signed an agreement purporting to be for an underlease, with a ground-rent of 50*l.* a year,

whereas the defendant was lessee at a ground-rent of 24*l.* only. The plaintiff paid 5*l.* on account, and gave his I O U for 69*l.*, the balance of the deposit money. It appeared that the rents had been raised the day before, and that the tenants would leave if the rent was enforced. A draft of the underlease was afterwards sent to the plaintiff's solicitor, who returned it unperused, and requiring the agreement to be cancelled on the ground of fraud and misrepresentation. The defendant then brought an action on the I O U, whereupon this bill was filed for an injunction and to annul the contract. It appeared that the ground-rent of 50*l.* would be high without the payment of any premium.

*Roll and J. Williams* for the plaintiff; *Daniel and Southgate* for the defendant.

The Vice-Chancellor said, that regard must be had to the very little time for deliberation which had been given to the plaintiff, and to the haste with which he had been allowed to sign the contract, and which supported the view that he had been entrapped into signing the agreement. The plaintiff had clearly signed it on the representation that it was a proper agreement for him to sign for the purpose of purchasing a lease for 75 years at a moderate ground-rent under a given lease. It appeared, however, that the defendant in selling was about to fix the ground-rent, not according to the original rate, but to what he chose to impose; and a fair opportunity had been given to release the plaintiff from the agreement otherwise improperly obtained, and it would therefore be annulled with costs.

### Court of Exchequer.

*Brewer v. Jones.* Jan. 30, 1855.

**ATTORNEY.—LIABILITY TO BAILIFF'S FEES ON EXECUTION OF FI. FA.**

*A rule was discharged to set aside the verdict for the plaintiff in an action brought by the bailiff to recover from an attorney the fees on executing a writ of fi. fa., although the defendant had delivered the writ to the sheriff without giving any direction as to its execution.*

*Semble, that the attorney, in order to avoid such liability, should communicate with his client.*

THIS was an action by a bailiff to recover from an attorney the fees on executing a writ of fi. fa., and on the trial it appeared that the attorney had delivered the writ to the sheriff, without any direction as to its execution, who handed it to the plaintiff. The verdict having passed for the plaintiff, this rule was obtained to set it aside and enter it for the defendant. Gray showed cause, citing *Walbank v. Quarterman*, 3 Com. B. 94.

*Hawkins* in support.

The Court said that, in accordance with the case cited, the attorney was liable, and that in order to avoid such liability he should communicate with the client. The rule would therefore be discharged.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

— Still attorneyed at your service. — *Shakespeare.*

SATURDAY, MARCH 31, 1855.

### REMUNERATION OF SOLICITORS.

#### OBJECTIONABLE RULES OF TAXATION.

WE have to notice the important Debate which took place in the House of Lords on the 26th instant, relating to the remuneration of Solicitors. It arose in the Committee of their Lordships on the Bill for the "despatch of business in the Court of Chancery." That measure proposed, in its title "to make further provision for the more speedy and efficient despatch of business in the Court of Chancery;" and the preamble recited that, "for the prevention of delays and inconveniences in the carrying on of such portion of the business of the Court as is transacted by the Master of the Rolls and the Vice-Chancellors respectively sitting in Chambers, it is requisite that an addition to the number of junior clerks attached to the Courts of the Judges respectively should be forthwith made;" and it was also recited that "a further like addition may hereafter become necessary." It was therefore proposed to empower the Master of the Rolls and Vice-Chancellors each to appoint an additional junior clerk forthwith, and to enable the Lord Chancellor to appoint other junior clerks hereafter.

The laudable object of the measure was, to prevent delay in the business of the Court; and the Council of the Incorporated Law Society thought it a favourable opportunity to bring another important topic before the House of Lords which is also productive of delay,—namely, "the faulty mode of remunerating professional men," as described by Lord Brougham, who emphatically declared "that whatever other changes were effected to improve our sys-

tem, a large proportion of the evil would remain, unless this difficulty could be grappled with and overcome."

The Council consequently seized this occasion to represent the grievance of which they have long complained, on behalf of their brethren generally. They accordingly represented that the old vicious principle of professional remuneration had been applied to the Chamber practice, restraining the legitimate fees of Solicitors, and impelling them to cause steps and forms to be multiplied in order to obtain anything like adequate payment for their services. Thus in order to be well prepared to pass a complicated account, or establish a pedigree, a month's previous preparation may be necessary; but for this labour and pains no fee is allowed; while if the preparation be omitted and the work done in the officer's presence the solicitor receives his usual fees: the Judge or officer's time is wasted, and unnecessary delay and expense are incurred.

It was urged that measures should be adopted to give the practitioner a direct interest in speedy instead of dilatory proceedings. The Society, therefore, prayed their Lordships to refer the Bill then before them, and the whole operation of the recent Acts, for full investigation in a Select Committee of the House.

The case of the Solicitors was brought forward by Lord Lyndhurst with his accustomed clear, impressive, and logical manner—remarking concisely, but forcibly, on the objects to be attained, and the course to be adopted which might lead to a satisfactory result.

It will be seen by the Report of the Debate which follows, that the Lord Chancellor and Lord St. Leonards objected to the general subject of Solicitors' costs being

connected with the particular measure before the House—that measure requiring to be expeditiously passed, and the investigation of the other being one of great difficulty, if not altogether impracticable. Their Lordships, however, distinctly admitted the desirableness of improvement in the mode of assessing the charges of Solicitors, and their willingness to concur in the appointment of a Select Committee, if a practicable plan for effecting the object could be devised.

So far the “ventilation” of this important matter has not been fruitless. The grievance is admitted, and if perfect justice cannot be done, some approach to it may be made. It is scarcely sufficient to say that we must take the “rough with the smooth,” and be content with a sort of wild justice administered, sometimes at the expense of the client and sometimes of the attorney. Let us try at least to diminish the evil if we cannot remove it altogether.

There are various ways in which an experiment might be attempted. The Lord Chancellor is right in saying, that it would be absurd in a transaction of 100,000*l.* to pay the same per centage as on a small amount. No such thing is proposed, but it would not be unreasonable that a higher charge should be allowed for the responsibility and additional precautions taken where the property dealt with was of great amount.

Where, also, the outlay for the fees of counsel, the fees of Court, and the expense of witnesses is large, and the repayment long delayed, surely it is not unreasonable that interest should be allowed at a moderate rate.

Now, both these modes of remuneration prevail in Scotland; why should they not be adopted in England? To some extent, indeed, there is already a precedent for a different scale on this side the Tweed, both in our Superior Courts and in the County Courts. In the Superior Courts, under 20*l.*, the scale is less than above that sum; and in the County Court there are various scales according to the sum recovered.

Again, in regard to the discretionary power of the taxing officer to regulate the amount of the fee in proportion to the extent of skill and labour (apart from responsibility)—the Common Law Masters are authorised, instead of the former limited fee of 13*s.* 4*d.* for instructions for a brief, to allow whatever they think just and right. Five, ten, or twenty guineas are often allowed, and we understand, in some in-

stances fifty or more. Then the present Lord Chancellor and the other Judges have recently enlarged the fee for proceedings in the Judges' Chambers from one to ten guineas. The principle of *discretion* is therefore established; and we trust it will be extended to instructions for bills, answers, cases and other proceedings, requiring great care and attention in preparation and arrangement; and that directions will be given to the Taxing Masters in Chancery, (as were given in Hilary Term, 1853 at Common Law,) to make such allowances for superior skill and diligence as the nature and circumstances of the several classes of cases may require.

#### DEBATE ON THE DESPATCH OF BUSINESS— COURT OF CHANCERY BILL.

Lord Lyndhurst said, this Bill related to a point was connected with very important matters—all of which it would be very desirable to have referred to a Select Committee. He had two petitions to present in favour of such a course of proceeding—one from a very important body, the Incorporated Law Society, which consisted of some of the most intelligent men in the Profession—and the other petition from the clerks referred to in one of the clauses of the Bill. The present Bill had for its object the more speedy and effectual despatch of business in the High Court of Chancery, and other purposes; and chiefly proposed to facilitate the despatch of business in the Chambers of the Judges of the Court of Chancery by an additional number of junior clerks. This plan, it was considered, would not only not be beneficial but would be injurious to the suitors of the Court. By the Act of Parliament under which Chamber practice was established, and by the General Orders of the Court of 16th October, 1852, and those of 3rd June, 1850, the Legislature and the Court sought to establish for all Chamber business, consecutive proceedings instead of the old practice by hourly warrants, but it was found that in the Chambers of some of the Judges great delays arose, as an appointment, or an adjourned hearing, could not be obtained at a less period than from two or three to even four or five weeks. These delays, however, were not found to arise from the want of junior clerks but from the amount of work by which the senior clerks were overwhelmed—consequently the increase of junior clerks proposed under the present Bill would not tend to put an end to the delays complained of, unless, indeed, it were intended that references in Chambers should be proceeded with before such junior clerks—but it was felt that such a plan would be most ob-

jectionable, as it would remove the hearing of matters still further from the Judge and bring them before an inferior class of officers. In proposing that this Bill should be referred to a Select Committee, it was scarcely necessary to remind their lordships that the Act by which the Masters' Office was abolished was principally owing to the inquiries made by a Select Committee appointed by this House, in 1851, on a Bill for giving primary jurisdiction to certain cases to the Masters in Chancery.

An important point to which he would advert was the present highly objectionable mode of remunerating Solicitors—a mode which urgently demanded revision. In support of this view, his lordship cited the opinion of very eminent and competent authorities. His noble and learned friend (Lord Brougham), after referring to the divided responsibility which the system of Masters created, as one great cause of delay and expense in the Court of Chancery, expressed himself thus before the Committee of the House of Lords, which sat on the Masters in Equity Jurisdiction Bill in the session of 1851:—

“My opinion is clear that the other cause is the perfectly faulty mode of remunerating professional men, Solicitors especially, but I do not except Counsel. This opinion is the result of my whole professional experience and observation, and it is not confined to proceedings in equity. The subject is one of great difficulty, but it is one of yet greater importance, and I feel assured that whatever changes are effected to improve our system, whether of Equity or Common Law, a large proportion of the evil will remain, unless this difficulty shall be grappled with and overcome.”

Another distinguished authority was that of Lord Langdale, the late Master of the Rolls, who, in a letter dated the 10th of November, 1842, addressed to the Board of Taxing Masters, and a copy of which the noble and learned writer also transmitted to the Incorporated Law Society, stated—

“That the system gives to the Solicitor, and every other legal practitioner, a direct interest to increase the length of documents and the number of steps or proceedings in the transaction of business;” and “has in many cases made it almost compulsory upon the Solicitor, in his own defence, to put his client to very great and unnecessary expense, for the purpose of obtaining some remuneration for services in respect of which he cannot otherwise make a lawful demand.”

The noble lord illustrated the manner in which the system worked by pointing out the tendency of the existing inadequate scale of fees paid to Solicitors for conducting Chancery business. For example, in the case of a complicated account, or an intricate pedigree,—to enable the Judges' chief clerks to get through it in one sitting required, perhaps a whole month's previous preparation by the Solicitor. For such preliminary labour, however, no fee was allowed; and yet if that

labour were performed in the presence of the officer (whose time was consequently wasted), the Solicitor received the payment that was otherwise denied to him. Thus, although speed and simplicity were the Clients' interests; dilatoriness and intricacy were the interest of the Solicitor. So, again, with respect to conveyancing: if a Solicitor drew a deed or will of a given number of folios, he was entitled to a certain fee; whereas if he sat down and, by bestowing great pains upon the document, succeeded in abridging its length by one-half, he would lose half his remuneration. A premium was therefore held out to verbosity, and the Solicitor's interest was made to stand in direct antagonism to that of his Client. Further, when a Solicitor gave advice in the progress of a suit he received no fee; but if he saved himself the trouble and responsibility of giving such advice, and laid the papers relating to the cause before counsel, he was entitled to charge several guineas for his profit. And if a plaintiff's Solicitor appeared before a Judge in Chambers and argued against counsel on the other side, he would only receive for doing his own work and that of a counsel 2*l.* or 3*l.*; whereas the defendant's Solicitor, who perhaps only sent a young clerk with counsel would obtain 6*l.* or 7*l.* Could anything then be more absurd, unequal, unjust, or impolitic than such a mode of remunerating professional men? A change of system was obviously demanded, and the remedy would be found in an approximation towards the principle of *quantum meruit*, under which the Taxing Master should have regard to the actual skill and labour employed and responsibility incurred, instead of merely allowing one uniform fixed fee to Solicitors for the same nominal services. Without this all attempts to make the administration of justice speedy and efficient would be thwarted.

This matter was one closely connected with the speedy and efficient administration of justice in the Court of Chancery,—was one which ought to be thoroughly investigated,—and could not be better investigated than by referring this Bill to a Select Committee.

The Lord Chancellor agreed that the question of the remuneration of solicitors was of the greatest importance; at the same time it was one of very considerable difficulty, and he thought he had some right to complain that his noble and learned friend had not communicated with him previous to bringing it under the notice of the House, as he then should have been able to enter into the subject more fully. Shortly after his acceptance of the Great Seal he had been waited upon by a deputation from the society referred to, and, in consequence of the representations then made to him, he had thought it his duty to look into the subject to see if he could devise any more satisfactory plan by which the remuneration of solicitors should be calculated upon the scale of merit, which ought, in truth, to be the object of all systems. The noble and learned lord said

that the remuneration ought to be calculated on the scale of *quantum meruit*, but the difficulty was how to ascertain the *quantum meruit*. The scale of fees at present in force had been fixed by his predecessor in office after great consideration, and no doubt it would be extremely inconvenient to be changing the fees every year, so that persons would never know what it was that they were to receive. It very often happened that the interest of the client conflicted with that of the solicitor, and, if proceedings were to be paid for by their length, not very honourable practitioners would be occasionally tempted to lengthen the proceedings, in order to increase their remuneration. The proposal to pay them according to a percentage of the value of the property involved appeared to him perfectly preposterous, for sometimes a question involving 100,000*l.* might occupy a very short space of time. In like manner, it would be impossible to look into each separate case to see what remuneration should be given for the particular service performed. He thought he was justified, therefore, in saying that the matter was full of insuperable difficulties, and he had been obliged to leave it as he found it, with the exception of making some slight alterations.

This was in the spring of 1853, but since then the Master of the Rolls had informed him that he had gone into the subject, but had not succeeded in framing any plan which would exactly meet the views of all parties. It was customary for the Judges of the Court of Chancery to meet together, in the evening of the first or second day of each Term, to consult as to any alterations of practice which might have been suggested by the proceedings of the previous three months, and at one of these meetings, at the beginning of Michaelmas or Trinity Term last, it was represented to him by all the Judges of the Court of Chancery that it would be of great advantage if largely increased remuneration were given to solicitors in cases where, by their having got the facts into a neat and intelligible form, a long inquiry was superseded, and the hearing compressed into an hour or two, instead of being spread over two or three days. This was an alteration which he had been of opinion could safely be made, but he owned he entirely despaired of ever arriving at any general system of remuneration which should exactly satisfy the wishes of all parties.

If his noble and learned friend would move for a committee to inquire into that subject, he should be the last man to oppose it, but he certainly could not consent to such an inquiry being tacked on to this Bill, with which it had nothing whatever to do. With respect to the present Bill, the original object in introducing it was to obtain power to appoint additional junior clerks to assist the senior clerks in the Judges' Chambers, it having been represented to him by the Judges that the business in their offices was greatly impeded by the want of such clerks. The senior clerks, it appeared, having each only one junior

clerk under them, were often obliged to do work which would properly fall to the lot of a junior clerk to attend to, and it was thought advisable that extra assistance should be afforded them by the appointment of a second junior clerk in each office.

He originally introduced the Bill with that sole object; but his attention was then called by persons connected with the Court of Chancery to the fact that there was one office, that of Master of Reports and Entries, the abolition of which had been recommended by a Committee of the House of Commons, but that was not adopted by the Act passed three years ago, although other recommendations of that Committee were adopted. The reason why the recommendation he had mentioned was not adopted was, that his noble friend Lord Truro thought that that was a hasty recommendation—that the office was useful—that, if necessary, its duties might be increased; he, therefore, thought it was better it should remain. But it had since been found that the office did not work well. The Office of Clerks of Records and Writs, in which most of the business of the Court of Chancery was carried on, could transact more business, and more effectually, if it were separated from the Office of Reports and Entries in the way in which it now existed. It was, therefore, suggested as desirable, practically to abolish the Office of Reports and Entries, the present holder of that office to be called upon to perform other duties, with the same salary, during his life, and that the duties he had hitherto discharged should be transferred to the Clerks of Records and Writs. He had made it his duty to go and inspect the office of the Master of Reports and Entries, and he must say that it was in a most discreditable state. The place was crowded with documents so as to defy all attempt at arrangement, and the whole floor was covered with papers that were of the greatest importance.

By the Act of the 15 & 16 Vict. four clerks were appointed to perform the duties of Clerk of Records and Writs. One of those appointments fell vacant the other day. The Master of the Rolls had not felt it to accord with his views to fill up that vacancy, so that three clerks were now discharging the whole of the duties of that office. It was proposed that they should continue to do so, and that if it should appear to the Lord Chancellor that the additional duty cast upon them deserved additional salary, he (with the advice and assistance of the Master of the Rolls) was empowered to give it, so that the whole amount paid for such salaries in any one year should not exceed, if divided equally, 250*l.* for each clerk.

Under the Act which abolished the Masters' offices, power was given to the Lord Chancellor to let or sell the Masters' offices, but, further powers being thought requisite, he proposed that the piece of ground in Southampton-buildings and the buildings thereon

should be vested in the Lord Chancellor for the time being for the purposes of the Act.

With regard to the proposal of his noble and learned friend to refer the question of solicitors' fees to a Select Committee, he thought it was going out of their lordships' way, and would be doing an act which was not at all necessary.

Lord St. Leonards said, that one thing was most obvious, that nothing would be more unwise than to disturb the late settlement on this question without grave consideration. What he called the late settlement was the Act passed in 1852, when the new arrangements were made with regard to the Court of Chancery, affecting not only the matters referred to in the Bill now before their lordships, but the whole business of the highest Court of judicature in the kingdom. He was not disposed to offer any opposition to the present measure, but there ought to be great forbearance exercised in coming to a decision upon any particular branch of the system until they saw how all its parts worked together. If their lordships allowed a pressure from without to have too much influence, they might by and by find it exceedingly inconvenient. Give the system a little time to work, and whatever evils might be found in it, set about and correct them.

As regarded the appointment of an additional junior clerk to each chief clerk, it was impossible to resist that demand. He agreed with his noble and learned friend, as to the appointment of an additional chief clerk, that if not absolutely necessary he should regret its being done. If the Judges did not require it, he was sure the chief clerks did not require it. If there were more chief clerks, it appeared to him that the great security of the whole plan of 1852 would be violated. That plan was based upon this:—that the clerks should be kept in their proper position, that they should be men of ability and of judicial power, but that they should not be viewed in the same light as the Masters were, but should depend upon and be under the sole direction of the Judge. The duties of the chief clerks, from what he had himself seen, had been well discharged, and he believed the offices were filled by men who had proved themselves competent for the duties intrusted to them.

With regard to the building of new Courts, he certainly would press upon his noble and learned friend the necessity of taking the subject into consideration without loss of time. He rejoiced that he had successfully resisted the transferring of the Judges' Chambers to the Masters' offices. He felt that the locality was extremely prejudicial for carrying on the business of the Court of Chancery; but, although he did so, he never thought of hiring chambers except as a temporary arrangement. There was a spot in Lincoln's Inn on which two new Courts could be built, with convenient chambers for the Judges' clerks, and if the Masters' Offices in

Southampton Buildings were sold and the money applied to the new building, the expense would be very small indeed. He thought the Government ought to erect the building suggested, as it was almost essential to the working of the legislation of 1852.

As his noble and learned friend retained the Master of the Reports and his salary, he did not object to that part of the bill. He considered the clerks in the Record Office had mistaken the course which they ought to have taken, and that, instead of petitioning against the Bill, they should have gone to his noble and learned friend and respectfully submitted to him any complaint on the subject of remuneration. Unless the new system were watched they would have abuses springing up. It was not sufficient to carry measures of reform. It was the duty of his noble and learned friend on the woolsack, of his noble and learned friend near him (Lord Lyndhurst), and of himself—who understood the subject—to give their anxious attention, for the benefit of the suitor, to see that the system worked as was intended.

It was said that the attorneys did a great deal of work and had very little remuneration for it, but they must take the business altogether, and consider whether the whole did not produce sufficient remuneration. His noble and learned friend said the attorneys had the temptation to make conveyances of unnecessary length for the sake of costs, but he did not believe—though in every profession there would be some persons who would act dishonourably and discredibly—that any respectable professional man would indulge in great length for the mere purpose of making charges. If they altered the fees, that would give an additional motive for delay. They could not prevent delay except by such arrangements as those of 1852. His argument with the attorneys was that, although the scale of fees was not so large as formerly, the facility with which cases would be decided and their bills paid would be more advantageous than those long-winded suits in which the interest of their money absorbed a great proportion of their profits. He could have no other motive in setting the fees of 1852 than that of giving fair remuneration to the attorneys, standing as he did between them and the suitors. If it could be shown that they were entitled to higher remuneration he was perfectly ready to join with his noble and learned friend in giving it; but still he must say they ought to take the rough with the smooth—it would not do to take all the plums and leave the rest of the pudding. The attorneys desired to have any expense saved by their exertions considered in the amount of remuneration. If that could be done he should not object, but there must be something by which to measure the value of services, and, therefore, the proposition on the part of the solicitors did not seem to him to be practicable. He would not oppose the committee, but he was bound to declare that he should not go to



that committee with any hope of ever coming at a satisfactory conclusion.

There were in the scheme of 1852 several things requiring attention, and one was the operation of the regulation relative to the examination of witnesses. Care should be taken to see that the expenses were kept within narrow bounds, and that no special examination was taken without very sufficient grounds. There ought also to be some check upon the number of counsel who attended before the examiner.

Lord Lyndhurst said, it is now nine or ten years since he had washed his hands of the Court of Chancery, and he had never wished to entangle himself again in its folds. He had to-night presented a petition from the Incorporated Law Society, who were more minutely acquainted than any other body of men with the proceedings of the Court of Chancery. He had no doubt their statements were correct, and he had founded his observations upon the statements of that petition.

The Lord Chancellor had referred to the petition of the clerks in the Record Office, who had not adopted a perfectly correct course in presenting a petition to their Lordships' House without previously communicating with the head of that Court. The circumstance, however, should never be an obstacle in their way as far as he was concerned, but he must protest against such a course as irregular.

Lord Lyndhurst said, that the bill did not put the clerks of the Record Office on the same footing as the other offices, as was recommended by the Select Committee of the House of Commons of 1848.

The House then went into Committee *pro forma* on the bill.

#### AMENDED BILL FOR DESPATCH OF CHANCERY BUSINESS.

THE 5th clause has been altered by the following additions, which are marked in *italics* :—

"From and after the time when such abolition shall take effect, the business of the Report Office (*except such part thereof as is transacted by the entering clerks*) shall be conducted and carried on under the superintendence, direction, and control of the Clerks of Records and Writs, who shall thenceforth discharge all such duties relative to the Report Office as may then belong to the Office of the Master of Reports and Entries, as far as the same may be from time to time necessary or proper to be discharged; and *such part of the business of the Report Office as is transacted by the entering clerks shall be conducted and carried on by such entering clerks (who shall be thenceforth styled The Entering Clerks to the Regis-*

*trars)* under the superintendence, direction, and control of the registrars, subject nevertheless under the superintendence, direction, and control of the Registrars, as to all and every part of the business now transacted in the Report Office to such rules and regulations as the Lord Chancellor, with the advice and assistance of the Master of the Rolls, may from time to time think fit by order to make concerning the same."

The 8th clause is thus altered :—

"Nothing in this Act contained shall be taken to repeal or alter, as far as regards James Thomas Fry, the present Master of Reports and Entries, any of the provisions contained in the sections numbered respectively 34, 35, and 36 of the said Act "for the Relief of the Suitors of the High Court of Chancery," relating to the countersigning by the Master of Reports and Entries of notes or cheques drawn by the Accountant-General of the Court of Chancery upon the Bank of England, and the payment thereof by the same Bank, and directing that the Master of Reports and Entries should also perform all such other duties (as well as the duties in the same Act mentioned) as the Lord Chancellor should from time to time by any order direct, and the same provisions shall respectively continue in full force as far as regards the said James Thomas Fry, and the Lord Chancellor is hereby required to continue the said James Thomas Fry as an officer of the Court of Chancery for the performance of the duties hereinbefore mentioned, or such other duties as aforesaid, after and notwithstanding that the abolition of the said office may have taken effect under this Act.

The 10th clause has also been modified thus :—

"In case, upon the abolition of the office of the Master of Reports and Entries taking effect, any of the persons now respectively holding the offices of Clerks of Records and Writs shall be required under this Act to discharge the duties of the office of the Master of Reports and Entries, or any of them, and the Lord Chancellor, with the advice and assistance of the Master of the Rolls, shall deem the duties then devolving upon the said persons to be too extensive in proportion to their present salaries, they respectively may receive, in addition to their respective salaries as Clerks of Records and Writs, such salaries, not exceeding the sum of pounds per annum each, as the Lord Chancellor, with the advice and assistance of the Master of the Rolls, shall by order direct; but such additional salaries shall cease in the event of the vacancy now existing being filled up by the appointment of a fourth Clerk of Records and Writs, or in the event of the said persons now respectively holding the offices of Clerks of Records and Writs being relieved from the duties of the office of Master of Reports and Entries."

## FURTHER PROPOSED REFORMS IN BANKRUPTCY LAW.

THIS branch of our jurisprudence seems doomed to unceasing change, as well in the rules of Law as in the constitution and practice of the Courts. During the last 30 years no less than 26 Acts of Parliament have been passed. An able letter has just been published by Mr. Whitmore, the Official Assignee, which, we must admit, points out several important defects in the last Bankruptcy Consolidation Act of 1849. Mr. Whitmore observes on the Report of the Commissioners, that it does not touch the root of the evil, consisting in the palpable fact, that the Bankruptcy Court is held in low estimation by the public, and that no one resorts to it who has an alternative. Mr. Whitmore thus accounts for this result:—

“The large merchants avoid it; for they, by the aid of the arrangement by deed clauses, can effect their settlements more to their own satisfaction out of Court. The large warehousemen avoid it; for they, having succeeded in extending the penal clauses, and in introducing the classification of certificates, resort to the Court only as a penal one. Honest debtors avoid it; for they are at once classed with the dishonest. Creditors avoid it; for they dislike its forms and its publicity; and all avoid it, really or ostensibly, on account of the expense. I do not stop to prove this; it is written on every page of the evidence, and admitted, in other terms, in the report itself.”

The Author of the Pamphlet then contends that the Legislature has committed a capital error in attempting to combine objects in their nature incongruous. He says, 1st,—

“The Legislature invites an honest debtor to petition the Court of Bankruptcy, and then gives him, what has now, more than ever, become a bad name. It invites him to petition, and then at once, and without inquiry, classifies him with, and treats him as, the dishonest. It invites him to petition, and, when he has voluntarily given up all, sends a messenger into possession, and a broker to take an inventory, of all his effects, to prevent him from abstracting a part. It invites him to petition as an honest man, and then, honest as he may be, subjects him to be judged under the penal clauses, in connection with the certificate. Moreover, the Legislature requires the Court, as an administrative Court, to be self-supporting, and then defeats the object by making the Court Penal.”

2nd. Mr. Whitmore objects to the transfer of the power of granting the bankrupt's

certificate from the creditors to the Commissioner:—

“It is a sound principle in commercial economy, that all parties, competent to manage their own affairs, should manage them in their own way, without the intervention of the Legislature. A debtor engages to pay his creditor twenty shillings on a given day. The debtor, from one of the many causes—misfortune, imprudence, error of judgment, or misconduct—which lead to insolvency, fails, and the creditor agrees to forgive him his debt—whether from expediency, or from kindly feeling, it matters not—and to accept ten shillings instead of the twenty. Why not? and what is fitting in regard to one creditor is fitting in regard to any number of creditors.

“When, therefore, the Legislature took from the creditors the power of granting to their debtors their certificates—in other words, of forgiving them their debts—and transferred it to a Court of Judicature, it lost sight of a principle, the soundness of which it has recognised in the arrangement by deed clauses; and if it recognises its soundness in those clauses, why not also recognise its soundness, at least in administrative matters, in the Court of Bankruptcy?”

The requirements of an *Administrative*, as distinguished from a *Penal* Court, are next adverted to:—

“Her Majesty's Commissioners, in their report, say, ‘In its main features, a Court of Bankruptcy is a Court of Administration;’ and, again ‘the characteristic of a Court of Bankruptcy is administration;’ and this no doubt is true. But it is not less true, that the transferring the power over the certificate, from the creditors to the Court, the penal clauses as they affect the certificate, and, still more perhaps, the attempt at a classification of certificates, have gone far to convert, and in conjunction with the increased facilities for arrangements out of Court, are daily more and more converting this, ‘in its main features, Court of Administration’ into a Criminal Court.

“Ought this state of things to exist? I think not; and I seek to disentangle this Court of Administration from the fatal meshes of the Penal Law, in which it has become gradually involved, and to reduce administration to its original and more simple elements.

“It will hardly be contended that this country does not require a Court purely administrative. The necessity for it is proved by reference to a return made by Mr. Perry showing the estimated number of compositions and assignments during the ten years from 1843 to 1853, exclusive of deeds of inspectorships, to amount to 88,717. We know how much there was of wrong doing even under the control of the bankruptcy system, previous to the establishment of the Court in its present form in 1839; and is it to be believed that in the 88,717 compositions and assignments above

referred to, and in the arrangements by deed out of Court, there has been no wrong doing? The reverse is notorious.

"The necessity is further proved by another test; namely, by the clauses No. 224-229, in the present Act authorising arrangements by deed, granting powers to majorities to bind minorities out of Court; powers of which an extension is now recommended by her Majesty's Commissioners, but which appear, even in their minds, to require some justification. Not that arrangements by deed are otherwise than desirable, where all parties concur; but the Legislature, when sanctioning the principle of majorities controlling minorities, is bound, at least, to give to the minorities full protection, and such full protection can more readily and effectually be extended through the immediate administration of the Court than by making it 'ancillary.'

"It can be no valid argument for extending the application of the above principle to, and, as it is recommended, beyond, those clauses, that the Court, in its present state, is imperfect. The obvious answer is, perfect the Court.

"Nor is the necessity for a Court purely administrative, met by the clauses in the present Act which relate to arrangements under the control of the Court, for practically, they are useless to any good purpose.

"It can hardly either be contended that ready means should not be afforded by the Legislature for the punishment of dishonest debtors; but whether the present are the right and most efficient means, or whether, as 'some of her Majesty's Commissioners' 'think defined legal offences should be punished, only after trial by jury before the regularly constituted Courts of penal judicature,' the Legislature will determine.

"How then are the objects I have pointed out as incongruous—how a sound principle in regard to the granting of the certificate—how the distinct requirements of an Administrative, and of a Penal Court—to be respectively attained? The means, it appears to me, are very simple. The present Court of Bankruptcy would be sufficient for all purposes, if separated into two departments; the one purely Administrative, the other, if it must be so, Penal: the one to be called the 'Administrative,' the other the Penal, or 'Bankrupt,' Court."

Mr. Whitmore suggests that the business of the administrative department should be transacted before a *Commissioner in Chambers*; and the penal or bankrupt business in the *public Court* :—

"That the Administrative Court be, to a large extent, self-supporting; though, as every man, at one time or another, may be supposed to be either a debtor or a creditor, it may be contended that the Administrative Court, so far as regards the judicial department, should be supported, as the Penal Court should un-

doubtedly be, by the public: that the Administrative Court be a private Court; or rather, have the same publicity as, and no more than, attaches to arrangements by deed out of Court, the publicity that is sufficient for the one being sufficient for the other: that the Penal Court continue to be a public one: that the Administrative Court dispense with all unnecessary forms in regard to proofs of debts by creditors, and also with unnecessary forms of accounting by debtors; so as to bring the Administrative Court more in harmony with the wishes and wants of the public: that the proceedings in the Penal Court be also simplified, where practicable: that, in the Administrative Court, the certificate rest with the creditors, as virtually it does under arrangements by deed and compositions out of Court, subject to a right of appeal by the debtor from the creditors to the Commissioner sitting in the public Court: that, in the Penal Court, the certificate, if it must be so, rest with the Commissioner; though, even in this Court, if the large majority of creditors consent to release their debtor, I doubt the wisdom of judicial interference, except in cases of fraud: that in the Administrative, as in the Penal Court, the Commissioners have the same full powers as at present, and that they make their own separate arrangements for sitting in either Court, according to the amount of business to be transacted: that in the Administrative, as in the Penal Court, immediate protection be given, when necessary, to the property of the debtor."

The next question urged on the reader is the distinction to be drawn between the debtor entitled to the milder dealing of the Administrative Court and the debtor to be subjected to the penal Court; and the writer remarks that—

"It is more consonant with the principles of justice, to consider every man honest until he be proved to be otherwise, rather than at once to classify him with the dishonest, only because he has failed in his engagements. It had been more in accordance with justice that the 630 bankrupts, referred to as having obtained first class certificates, had been permitted to pass through an Administrative, rather than through a Penal, Court. And it is curious to observe that, while our more recent legislation, and the spirit of the age, have inclined to the side of mercy, the bankrupt law should have become more penal. I take then administration to be the rule, subjection to the penal law the exception; and I assume the following to be tests of honesty in a debtor, entitling him, *prima facie*, to the benefits of the Administrative Court. The voluntary surrender of everything he possesses; the submission, in all things, to the wishes of his creditors, whether he be a petitioning debtor to the Court, or be petitioned against by a creditor. And I doubt whether any one single creditor should have the power to transfer such a debtor to the Penal Court; for, if the argu-

ment, approved by her Majesty's Commissioners in their report, in favour of the power of six-sevenths of the creditors to bind the remaining one-seventh, be sound, it would seem to follow that, not the will of one creditor only, but the concurrence of one-seventh of the creditors at large, should be necessary to transfer the debtor's estate from the Administrative to the Penal Court. Such debtors as have absconded, or may be proved, to the satisfaction of the Commissioner, to be about to abscond; to have vexatiously avoided, or harassed, their creditors; to have made away, or to be about to make away, with their property, or to have otherwise infringed the bankrupt laws, deserve, perhaps, to have their affairs administered in the Penal or Bankrupt Court."

These suggestions are, we think, entitled to serious attention.

## LAW OF ATTORNEYS AND SOLICITORS.

### SUMMARY JURISDICTION ON PETITION TO ORDER PAYMENT OF BALANCE OF MONEYS.

In the year 1846, a Solicitor being then concerned professionally for the petitioner, received on his account from a gentleman named Withall, a sum of 550*l.* belonging to the petitioner, and paid him of that sum 50*l.*, but the remaining 500*l.* continued in his hands, and this petition was presented to obtain payment of the balance.

The Vice-Chancellor *Knight Bruce* said :

"The remaining sum of 500*l.* has continued in the respondent's hands ever since, and, as he claims no set-off against the petitioner, is, of course, *prima facie* and presumptively now due from the respondent to the petitioner, who presumptively and *prima facie* also is entitled to recover it from him by a summary proceeding of the present kind, the character and manner in which it was received by him for the petitioner being considered. It has been upon the respondent therefore to show why an order should not be made against him accordingly. As to this, however, with respect to 200*l.*, part of the 500*l.*, there has been no difficulty, the petitioner having, on a ground that I shall presently notice, confined his claim to the residue of the money, namely, to the 300*l.* first-mentioned; as to which, therefore, alone I have to decide.

"The respondent's defence is this :—he says, that in 1846, one of his clients, Mrs. Wortham, the widow of the petitioner's uncle, being then in want of money, it was agreed between her and the petitioner that he should lend her 500*l.* at interest, and it was also agreed between them, that, as she was then indebted, and likely to become additionally indebted to the respondent, the loan should be

made by credit being given to her by him in account for the petitioner's 500*l.* The respondent says, that he did this accordingly in the same year at their request; that, consequently, matters between the three stand on the same footing as if he had then paid to the petitioner the 500*l.*, and the petitioner had immediately handed the money to Mrs. Wortham by way of loan to her; and that therefore the petitioner has no claim upon him.

"But the petitioner, whose story differs very much, though not altogether, from that of the respondent, says, in effect, that it was agreed between the three that the respondent should be at liberty to apply the whole or any part of the 500*l.* in meeting and defraying, or towards meeting and defraying, the costs and expenses of procuring or endeavouring to procure and suing for a parliamentary divorce or parliamentary dissolution of a marriage that had taken place between Mrs. Wortham's only daughter, Mrs. Newenham, and a very objectionable person much older than that young lady (the marriage having been contracted under circumstances highly reprehensible, at least on the part of the husband); of which divorce or dissolution the two ladies and the petitioner were, with the sanction and encouragement of the respondent, desirous. But it was (the petitioner says) also agreed that Mrs. Wortham should become personally responsible to the petitioner for the 500*l.*, with interest. He says that she became so, and that, accordingly, the 500*l.* remained in the respondent's hands, applicable by him for those costs and expenses, but, so subject, on the petitioner's account and for his use. He moreover says, that the proceedings for the divorce or dissolution, though commenced, became at an early state ineffectual and failed; that the whole of the costs and expenses thus incurred did not exceed 200*l.*; that he is willing to have them taken as amounting to 200*l.*; and that, in the events which have happened, the remaining 300*l.* must be treated simply as money of the petitioner in the respondent's hands.

"This is the question, or these the questions, so far as matter of fact is concerned, of which I have to dispose. There is, I need scarcely say, a collection of conflicting affidavits, including some by the petitioner and the respondent, which the counsel on each side have treated as part of the evidence. They, in fact, dealt with the petitioner as a competent witness for himself, and with the respondent as a competent witness for himself; and it is indeed clear, that, if either was not a receivable witness for himself, the other was not so for himself. But, as I view the materials before me, it is of little or no importance whether each or neither of them is treated as a competent witness for himself. I may in the next place make the remark (however obvious) that when an affidavit, whether that of a party used for or against him, or that of a mere witness, is read in evidence, it is competent to the Court, according to a judicial view of what is

reasonable, either to believe or disbelieve the whole, or to believe part and disbelieve the rest.

"First, I am satisfied that since the time when the respondent received the 550*l.* on the petitioner's account from Mr. Withall, not any portion of it except the 50*l.* has ever left the hands of the respondent, and that the petitioner did not lend the 500*l.* to Mrs. Wortham unconditionally—did not so lend it as to enable her to receive the money, or to deal with it at her will or pleasure. I think that they intended the money to be applied or applicable by the respondent in meeting and defraying the necessary or proper costs and expenses of procuring, or endeavouring to procure, by the aid of Parliament, the divorce or dissolution that they had in view. I am of opinion that she substantially and in effect (I do not say in terms) did to the respondent's knowledge (at the time) contract with the petitioner that no part of the money should be otherwise applied. I am of opinion, that when and before the character of the 500*l.*, as merely and simply the petitioner's money in the respondent's hands ceased, or was suspended or changed, the respondent had full knowledge of all the circumstances of the transaction, and consented to hold the money for the purpose of meeting or defraying the costs and expenses that I have just mentioned, and those only. I conceive, therefore, that, as between himself and the petitioner, it was not competent to the respondent to divert or use any portion of it for any other purpose.

"The application for the divorce or dissolution having failed, finally failed, in the House of Lords, the costs and expenses of the endeavour to procure it amounted to 200*l.* only, or did not exceed that sum, a fact admitted on each side. Upon that event happening, the petitioner consequently, in my opinion, had a right to demand not merely the whole 500*l.* from Mrs. Wortham, who had expressly assented to the holding of the money by the respondent for the purpose (the limited purpose as I think) that I have mentioned, but also 300*l.* of the 500*l.* from the respondent, whom I consider as having in substance contracted with the petitioner to that effect, for the facts and circumstances raised in my opinion such an undertaking.

"Being then of opinion that the petitioner is entitled to recover 300*l.* from the respondent, the remaining question for me to determine is, whether there is jurisdiction against that gentleman for the purpose under one or both of the petitions now before me. Upon this point (which, perhaps, as well as the other is not wholly free from difficulty) I have consulted many cases, both at law and in this Court, in which the exercise of a summary jurisdiction against an attorney or solicitor has been asked, opposed, and affirmatively or negatively decided upon.

"That the respondent was professionally concerned for the petitioner in the family transaction, whence the petitioner drew the

means of making the arrangement made by him as to the 500*l.*, the transaction from which in fact the money directly proceeded, and that it was on his account, and for his use, and in the professional character of the respondent that the latter received the 550*l.* from Mr. Withall, cannot be doubted. The question, whether the respondent was or could be professionally concerned for the petitioner in the parliamentary matter, is very different, and not as I conceive material; for in my judgment, the relation and connexion between them, which existing when the respondent received the 550*l.* from Mr. Withall, did therefore at one time exist with respect to the respondent's possession of this sum, have never been so destroyed or dissolved as to exempt him from that summary jurisdiction respecting the money to which immediately after receiving it he was unquestionably liable." *Ex parte Wortham*, 4 De Gex & Smale, 415.

## LAW OF COSTS.

### RIGHT OF PLAINTIFF TO COSTS OF SUMMONS IN BANKRUPTCY AS COSTS IN THE ACTION.

THE indorsee sued the acceptor of a bill of exchange, and at the same time proceeded by summons in the Bankruptcy Court, under the 12 & 13 Vict. c. 106, s. 78; but before the summons was returnable, an order was made by consent to stay proceedings in the action, on payment of debt and costs. The proceedings in bankruptcy were thereupon abandoned, but the plaintiff refused to deliver up the bill of exchange unless he were also paid the costs of these proceedings.

*Crowder, J.*, having made an order for the delivery up of the bill, the plaintiff moved for a rule *nisi* to set aside that order. *Pollock, L. C. B.*, said—"There ought to be no rule. A party to a bill of exchange, who has paid it, has a right to have the bill given up to him, in order to guard against its being again put in circulation. The plaintiff ought to deliver up the bill, on the defendant's giving him a receipt containing the terms of it." *Cornes v. Taylor*, 10 Exch. R. 441.

## NOTES ON CIRCUIT.

### EVIDENCE ON INDICTMENT FOR PERJURY IN COUNTY COURT.

ON the trial at Shrewsbury (March 22 last) of an indictment for perjury committed by one Downes in the County Court at Wellington, in a plaint against him for an assault, the proceedings in question were proved by the

County Court Judge, who had been sub-poenaed for the purpose.

Lord Campbell, C. J., in sentencing the prisoner to be imprisoned and kept to hard labour for 12 months, strongly reprobated the course adopted of subpoenaing the Judge, and said that the evidence should have been proved by the attorney or some other party.

In another case on the Western Circuit (March 24) the proceedings were proved by the foreman of the jury.

**PRACTICE AS TO ISSUE OF SUMMONS BY LEAVE OF JUDGE UNDER S. 60 OF COUNTY COURTS' ACT.**

It appeared, upon another indictment on the Norfolk Circuit, Bury St. Edmunds (March 21), for perjury against one Butcher in the Suffolk County Court at Bury, that the offence was committed on the hearing of a summons issued under the 9 & 10 Vict. c. 95, s. 60, by leave of the Judge, against a defendant who was not resident in the district, and that it was the practice in that Court to obtain such summons from the clerk at the office, under a general order by the Judge to that effect, on the production of an affidavit containing the requisite allegations for its issue, without any special application to the Judge in Court.

Pollock, L. C. B., intimated an opinion that the practice was objectionable, and said that the point would be reserved, if rendered necessary by the result of the trial.

The proceedings were proved by the clerk of the Court. A verdict of "Not Guilty" passed under the direction of the learned Baron.

**NEW ORDER OF COURT OF CHANCERY.**

**TRANSFER OF CAUSES TO THE MASTER OF THE ROLLS.**

*Saturday, March 24, 1855.*

WHEREAS from the present state of the business before the Lord Chancellor and Master of the Rolls respectively, it is expedient that a portion of the causes and claims, set down before the Lord Chancellor to be heard before the Vice-Chancellor Sir Richard Torin Kindersley and the Vice-Chancellor Sir William Page Wood, should be transferred to the Master of the Rolls' book of causes for hearing. Now I do hereby order that the several causes and claims set forth in the schedule hereunto subjoined, be accordingly transferred from the book of causes of the Vice-Chancellor Sir Richard Torin Kindersley, and of the Vice-Chancellor Sir Wm. Page Wood respectively to that of

the Master of the Rolls. And I do further order that all causes and claims so to be transferred (although the bills in such causes and the claims may have been marked for the Vice-Chancellor Sir Richard Torin Kindersley or the Vice-Chancellor Sir William Page Wood, under the orders of Court of the 5th May, 1837, and notwithstanding any orders therein made by the Vice-Chancellors Sir Richard Torin Kindersley or Sir William Page Wood respectively or their respective predecessors) shall hereafter be considered and taken as causes and claims originally marked for the Master of the Rolls, and be subject to the same regulations as all causes and claims marked for the Master of the Rolls are subject to by the same orders, provided nevertheless that no order made by the Vice-Chancellor Sir Richard Torin Kindersley or the Vice-Chancellor Sir William Page Wood or their predecessors in any such causes and claims, shall be varied or reversed otherwise than by the Lord Chancellor or the Lords Justices. And this order is to be drawn up by the registrar and set up in the several offices of this Court.

**SCHEDULE.**

*From Vice-Chancellor Kindersley's Cause Book.*

Mayne v. Mayne, cause.  
 Dolman v. Nokes, cause.  
 Attorney-Gen. v. Drapers' Company, cause.  
 Gibson v. Holmes, cause.  
 Shelford v. Kane, cause.  
 Dresser v. Hoare, motion for decree.  
 Morland v. Isaacs, cause.  
 Barnes v. Carter, claim.  
 London and South Western Rail. Company v. Humphery, cause.  
 Aubert v. Aubert, cause.  
 Taylor v. Portington, motion for decree.  
 Lawley v. King, motion for decree.  
 Lewarne v. Collins, cause.  
 Wood v. Wood, claim.  
 Marryat v. Marryat, motion for decree.  
 Moseley v. Glen, motion for decree.  
 Sealy v. Waugh, motion for decree.  
 Chester v. Brown, cause.  
 Shew v. Marsh, motion for decree.  
 Pennill v. Miller, cause.  
 Ball v. Freeman, cause.  
 Baynard v. Wooley, motion for decree;  
 Wearing v. Baynard, cause.  
 Aspland v. Watte, cause.  
 Price v. Hamblet; Same v. Same, cause.  
 Bunny v. Bunny; Same v. Chalk, motion for decree.  
 Perkins v. Lees, cause.  
 Remnant v. Lozell, cause.  
 Brumbridge v. Burton, motion for decree.  
 Essex v. Essex, cause.  
 Mortimer v. Fisher, cause.  
 Mayberry v. Miller, claim.  
 Riley v. Dickenson, motion for decree.  
 Basham v. Smith, cause.  
 Ingle v. Edgar, motion for decree.  
 Webb v. Solomon, motion for decree.  
 Rabbeth v. Foreman, cause.  
 Bennett v. Powell, cause.  
 Thompson v. Armitage, cause.

|   |  |
|---|--|
| Joy <i>v.</i> Joy, motion for decree.           | Mountain <i>v.</i> Sowden, cause.                  |
| Jennings <i>v.</i> Christopher, cause.          | Philpott <i>v.</i> The President, Vice-Presidents, |
| Henshaw <i>v.</i> Fletcher, motion for decree.  | Treasurer, and Governors of Saint George's         |
| Thwaites <i>v.</i> Mercer, motion for decree.   | Hospital, motion for decree.                       |
| Preston <i>v.</i> Preston, claim.               | Smith <i>v.</i> Smith, motion for decree.          |
| Hoffman <i>v.</i> Smith, cause.                 | Daniel <i>v.</i> Fussell, motion for decree.       |
| Hopkinson <i>v.</i> Carter, claim.              | Scott <i>v.</i> Jackman, claim.                    |
| Cobbit <i>v.</i> Brock, claim.                  | Young <i>v.</i> Ward, claim.                       |
| Grist <i>v.</i> Bush, motion for decree.        | Earl of Craven <i>v.</i> Ure, motion for decree.   |
| Fletcher <i>v.</i> Holland, motion for decree.  | Smith <i>v.</i> Boncey, claim.                     |
| Hatch <i>v.</i> Skelton, motion for decree.     | Hope <i>v.</i> Liddell, cause.                     |
| Jervoise <i>v.</i> Jervoise, cause.             | Jeffery <i>v.</i> Jeffery, motion for decree.      |
| <i>From Vice-Chancellor Wood's Cause Book.</i>  | Webster <i>v.</i> Bean, cause.                     |
| Farraby <i>v.</i> The Commercial Credit Mutual  | Bean <i>v.</i> Webster, cause.                     |
| Assurance Society, cause.                       | Watts <i>v.</i> Kazenove, claim.                   |
| Stephens <i>v.</i> Gadsden, motion for decree.  | Scruton <i>v.</i> Ford, claim.                     |
| Pickford <i>v.</i> Brown, motion for decree.    | Lowe <i>v.</i> Cresswell, cause.                   |
| Littejohns <i>v.</i> Household, cause.          | Hall <i>v.</i> Clive, cause.                       |
| Sharp <i>v.</i> Cosserat, cause.                | Fell <i>v.</i> Norman, motion for decree.          |
| Fry <i>v.</i> Noble, motion for decree.         | Bourne <i>v.</i> Shaw, cause.                      |
| Lane <i>v.</i> Jackson, cause.                  | Tweddell <i>v.</i> Rodgersson, motion for decree.  |
| Bullivant <i>v.</i> Pope, cause.                | Fitzgerald <i>v.</i> Morgan, cause.                |
| Wray <i>v.</i> Medworth, motion for decree.     | Clark <i>v.</i> Gill, motion for decree.           |
| Monypenny <i>v.</i> Baker, cause.               | Ogden <i>v.</i> Ogden, cause.                      |
| Scott <i>v.</i> Roberts, cause.                 | Clements <i>v.</i> Hall, motion for decree.        |
| Bankart <i>v.</i> Kirkhouse, motion for decree. | Rolton <i>v.</i> Barrow, cause.                    |
| Worthington <i>v.</i> Davenport, motion for de- | Sanders <i>v.</i> Wearr, cause.                    |
| cree.   | Bunny <i>v.</i> Hopkinson, cause.                  |
| Rackham <i>v.</i> Gilbert, cause.               | Goodfellow <i>v.</i> Rider, motion for decree.     |
| Morgan <i>v.</i> Thomas, cause.                 | Marryat <i>v.</i> Marryat, cause.                  |
| Clapham <i>v.</i> Manby, motion for decree.     | Richardson <i>v.</i> Heald, cause.                 |
| Smith <i>v.</i> Bakes, cause.                   | Chodwick <i>v.</i> Vickerman, motion for decree.   |
| Bayldon <i>v.</i> Milner, motion for decree.    | Perry <i>v.</i> Turpin, cause.                     |
| Henry <i>v.</i> Thornton, cause.                |  |

CRANWORTH, C.

## ANNUAL RETURN OF THE ACCOUNTANT-GENERAL OF THE COURT OF CHANCERY.

PAYMENTS OUT OF SUITORS' FUND, OCTOBER 2, 1853, TO OCTOBER 1, 1854.

|   | Cash.   | £      | s. | d. |
|---|---------|--------|----|----|
| To Cash paid nine Masters' Salaries, at 2,500 <i>l.</i> per annum . . . . .                     |         | 21,697 | 18 | 4  |
| — Accountant-General's Salary as Master . . . . .   |         | 582    | 10 | 0  |
| — Pension to one retired Master, at 1,500 <i>l.</i> per annum . . . . .                         |         | 1,445  | 6  | 3  |
| — Ditto to one retired Clerk . . . . .  |         | 642    | 7  | 5  |
| — Compensation to two Chief Clerks to Masters, pursuant to an Act 15 & 16 Vict. c. 80 . . . . . |         | 1,320  | 6  | 4  |
| — Compensation to two Junior Clerks to Masters . . . . .  |         | 796    | 13 | 10 |
| — Total . . . . .   | £36,485 | 2      | 2  |    |
| — Pensions to two retired Registrars . . . . .  |         | 5,625  | 3  | 3  |
| — Ditto to Registrar's Bag-bearer . . . . .   |         | 187    | 17 | 11 |
| — Total . . . . .   | £5,813  | 1      | 2  |    |
| — Accountant-General's Salary . . . . .   |         | 867    | 3  | 9  |
| — Expenses of office, office-keeper, water-rates, stationery, &c. . . . .                       |         | 433    | 12 | 0  |
| — Thirty Clerks' Salaries . . . . .   |         | 7,212  | 15 | 0  |
| — Pension to a retired Clerk of 450 <i>l.</i> per annum . . . . .                               |         | 436    | 17 | 8  |
| — Total . . . . .   | £8,950  | 8      | 5  |    |
| — Retired Examiner's Pension . . . . .  |         | 192    | 14 | 2  |
| — Two Clerks in Report Office . . . . .   |         | 144    | 10 | 9  |
| <b>Officers of the Lord Chancellor's Court:</b>   |         |        |    |    |
| — Usher . . . . .   |         | 288    | 18 | 11 |
| — Courtkeeper . . . . .   |         | 66     | 14 | 6  |
| — Persons to keep order . . . . .   |         | 231    | 5  | 0  |
| — Tipstaff . . . . .  |         | 192    | 14 | 2  |
| — Serjeant-at-Arms . . . . .  |         | 444    | 7  | 6  |

|  | £          | s. | d. |
|--|------------|----|----|
| <b>Officers of the Lords Justices' Court :</b>   |            |    |    |
| To Cash paid Secretaries . . . . .   | 770        | 9  | 0  |
| — Ushers . . . . .   | 481        | 13 | 4  |
| — Trainbearers . . . . .   | 192        | 12 | 4  |
| — Persons to keep order . . . . .  | 154        | 1  | 10 |
| <b>Officers to Vice-Chancellor Kindersley's Court :</b>  |            |    |    |
| — Secretary . . . . .  | 289        | 1  | 3  |
| — Usher . . . . .  | 192        | 12 | 7  |
| — Trainbearer . . . . .  | 94         | 6  | 4  |
| — Person to keep order . . . . .   | 77         | 0  | 11 |
| <b>Officers to Vice-Chancellor Stuart's Court :</b>  |            |    |    |
| — Secretary . . . . .  | 258        | 18 | 6  |
| — Usher . . . . .  | 192        | 12 | 4  |
| — Trainbearer . . . . .  | 96         | 6  | 2  |
| — Persons to keep order . . . . .  | 154        | 1  | 10 |
| <b>Officers to Vice-Chancellor Wood's Court :</b>  |            |    |    |
| — Secretary . . . . .  | 289        | 18 | 6  |
| — Usher . . . . .  | 192        | 12 | 4  |
| — Trainbearer . . . . .  | 96         | 6  | 2  |
| — Persons to keep order . . . . .  | 154        | 2  | 7  |
| — Total . . . . .  | £4,950     | 10 | 1  |
| — Surveyor's Salary . . . . .  | 77         | 13 | 4  |
| — Solicitor to Suitors' ditto, in lieu of Costs . . . . .  | 1,200      | 0  | 0  |
| — Disbursements . . . . .  | 90         | 5  | 4  |
| — Total . . . . .  | £1,290     | 5  | 4  |
| — Compensation to late Officers of the Court of Exchequer . . . . .  | 4,345      | 12 | 11 |
| — Compensation to late Officers of the Subpoena Office, Door-keeper, Crier, and Usher of the Court, Deputy Secretary of Decrees and Injunctions, and one Clerk in the late Clerk of Accounts' office . . . . . | 2,237      | 7  | 0  |
| — Expenses of Courts, Registrars' Offices, Masters' Offices, Report and other Offices, for repairs, rates, stationery, coals, candles, gas, servants' wages, &c. . . . .                                       | 4,732      | 9  | 2  |
| — Total Payments . . . . .   | 59,229     | 0  | 6  |
| Surplus interest carried over to the "Suitors' Fee Fund Account," as directed by an Act 15 & 16 Vict. c. 87, s. 53 . . . . .   | 53,117     | 13 | 2  |
| Balance on the Account, 1st October, 1854 . . . . .  | 21,985     | 19 | 9  |
|  | £134,332   | 13 | 5  |
| Stock . . . . .  | £4,212,709 | 9  | 6  |

## RECEIPTS ON ACCOUNT OF SUITORS' FUND.

|   | Cash. | £          | s. | d. |
|---|-------|------------|----|----|
| By Balance on the 1st October, 1853 . . . . .   |       | 17,745     | 8  | 4  |
| Dividends received during the Year . . . . .  |       | 115,633    | 15 | 7  |
| Cash received for Rent of Masters' Offices pursuant to an Act 15 & 16 Vict. c. 80 . . . . . |       | 953        | 9  | 6  |
|   |       | £134,332   | 13 | 5  |
| Stock . . . . .   |       | £4,212,709 | 9  | 6  |

## PAYMENTS OUT OF THE SUITORS' FEE FUND.

|   | £       | s. | d. |
|---|---------|----|----|
| Officers of the Courts . . . . .  | 6,849   | 5  | 8  |
| Salaries to Eight Senior Clerks to the Master of the Rolls and the Vice-Chancellors . . . . .           | 9,300   | 0  | 0  |
| Ditto to Eight Junior Clerks to ditto . . . . .   | 2,000   | 0  | 0  |
| — Total Chamber Clerks . . . . .  | £11,300 | 0  | 0  |
| Compensation to two Masters, at 725 <i>l.</i> per annum . . . . .                                       | 1,450   | 0  | 0  |
| Salaries to five Masters' Chief Clerks, at 1,000 <i>l.</i> each, and proportion to two others . . . . . | 5,125   | 0  | 0  |
| Salaries and Compensations to five Masters' Junior Clerks, and proportion to two others . . . . .       | 3,071   | 14 | 9  |
| Compensation to one Chief Clerk to Master . . . . .   | 812     | 10 | 0  |
| Ditto to one Masters' Junior Clerk, and proportion to two others . . . . .                              | 62      | 15 | 3  |
| — Total Masters . . . . .   | £10,522 | 0  | 0  |



|   | £        | s. | d. |
|---|----------|----|----|
| Salaries to eleven Registrars . . . . .   | 17,150   | 0  | 0  |
| Allowances for Writing, and Compensation to Registrars, under 3 & 4 Wm. 4, c. 94, s. 48, and 5 Vict. c. 5, s. 63 . . . . .  | 2,075    | 0  | 0  |
| Salaries to fourteen Registrars' Clerks . . . . .   | 6,900    | 0  | 0  |
| Bag Bearers to Registrars . . . . .   | 262      | 10 | 0  |
| Total Registrars . . . . .  | £26,387  | 10 | 0  |
| Salary to Master of Reports and Entries . . . . .   | 1,000    | 0  | 0  |
| Salaries to two Clerks in Report Office . . . . .   | 353      | 2  | 7  |
| Ditto to two Clerks of Entries . . . . .  | 635      | 0  | 0  |
| Compensation to late Clerks of Accounts . . . . .   | 2,581    | 5  | 0  |
| Pension to late Master of Reports, proportionate part to his death . . . . .  | 1,663    | 0  | 10 |
| Total Report Office . . . . .   | £6,232   | 8  | 5  |
| Salaries to two Examiners . . . . .   | 3,000    | 0  | 0  |
| Salaries to two Clerks to Examiners . . . . .   | 540      | 0  | 0  |
| Compensation to one Clerk to Examiners . . . . .  | 200      | 0  | 0  |
| Total Examiners . . . . .   | £3,740   | 0  | 0  |
| Salaries, &c., under 5 & 6 Vict. c. 84, and Lunacy Regulation Act, 1853 :   |          |    |    |
| Two Masters in Lunacy . . . . .   | 4,000    | 0  | 0  |
| Travelling expenses . . . . .   | 944      | 0  | 6  |
| Salaries to seven Clerks to Masters in Lunacy . . . . .   | 1,932    | 10 | 0  |
| Rent of premises . . . . .  | 330      | 0  | 0  |
| Expenses of Offices . . . . .   | 340      | 16 | 1  |
| Salary of Registrar in Lunacy . . . . .   | 800      | 0  | 0  |
| Salaries to four Clerks in Registrar's Office . . . . .   | 710      | 0  | 0  |
| Compensation to late Commissioners in Lunacy . . . . .  | 367      | 10 | 0  |
| Ditto to late Clerk of Custodies . . . . .  | 1,268    | 0  | 4  |
| Salaries to Visitors of Lunatics . . . . .  | 1,050    | 0  | 0  |
| Travelling Expenses . . . . .   | 956      | 18 | 6  |
| Salary of Secretary to Visitors . . . . .   | 300      | 0  | 0  |
| Ditto of one Clerk to Secretary . . . . .   | 150      | 0  | 0  |
| Rent of Premises . . . . .  | 107      | 18 | 7  |
| Expenses of Office . . . . .  | 44       | 11 | 11 |
| Total . . . . .   | £13,302  | 5  | 11 |
| Compensation to three Clerks of Affidavits . . . . .  | 1,700    | 0  | 0  |
| Salaries, &c., under 5 & 6 Vict. c. 103 :—  |          |    |    |
| Six Taxing Masters . . . . .  | 12,000   | 0  | 0  |
| Twelve Clerks to ditto . . . . .  | 2,700    | 0  | 0  |
| Clerk of Enrolments . . . . .   | 1,300    | 0  | 0  |
| Three Clerks to ditto . . . . .   | 750      | 0  | 0  |
| Four Clerks of Records and Writs . . . . .  | 4,500    | 0  | 0  |
| Sixteen Clerks to ditto . . . . .   | 3,338    | 6  | 10 |
| Rent of Taxing Masters' Offices . . . . .   | 800      | 0  | 0  |
| Total . . . . .   | £25,288  | 6  | 10 |
| Salaries to two Clerks of the Petty Bag Office, under 12 & 13 Vict. c. 110 . . . . .  | 750      | 0  | 0  |
| Accountant-General in lieu of brokerage, under 15 & 16 Vict. c. 87, s. 19 . . . . .   | 2,700    | 0  | 0  |
| Increased Salary to some of the Clerks in the Accountant-General's Office, under 15 & 16 Vict. c. 87, s. 39 . . . . .   | 1,987    | 10 | 0  |
| Compensation for loss of Office and Profits, under 5 & 6 Vict. c. 103 :—  |          |    |    |
| Two Six Clerks, and proportion of one deceased Six Clerk . . . . .  | 3,211    | 11 | 6  |
| Twenty Sworn Clerks . . . . .   | 28,938   | 12 | 7  |
| Three Agents to Sworn Clerks . . . . .  | 1,079    | 18 | 10 |
| One Waiting Clerk . . . . .   | 701      | 11 | 8  |
| Messenger . . . . .   | 12       | 12 | 0  |
| Total . . . . .   | £33,944  | 6  | 7  |
| Copy Money for writing and copying in the offices of the Clerk of Enrolments, the Clerks of Records and Writs, the Master of Reports and Entries, and the Registrar in Lunacy . . . . . | 5,165    | 7  | 0  |
| Expenses of various Courts and Offices, for stationery, coals, candles, servants' wages, rates and taxes, and for furniture, &c. . . . .  | 5,767    | 9  | 11 |
| Balance of Cash on the 24th November, 1854 . . . . .  | 24,444   | 16 | 6  |
| Total . . . . .   | £180,081 | 6  | 10 |

## RECEIPTS ON ACCOUNT OF SUITORS' FEE FUND.

|  | £               | s.       | d.        |
|--|-----------------|----------|-----------|
| By Balance of Cash on the 24th November, 1853 . . . . .  | 16,877          | 11       | 4         |
| By Lord Chancellor's Secretary . . . . .   | 6               | 9        | 0         |
| Fees formerly payable to the Lord Chancellor :   |                 |          |           |
| Purse Bearer . . . . .   | 294             | 10       | 6         |
| Clerk of the Crown . . . . .   | 71              | 4        | 8         |
| Clerk of the Patents . . . . .   | 56              | 15       | 2         |
| Secretary of Lunatics . . . . .  | 13              | 1        | 8         |
| Cash brought over from the Account of the Board of Visitors for the better care, &c., of Lunatics . . . . .  | 2,194           | 8        | 9         |
| Cash paid in by the several Committees . . . . .   | 1,991           | 0        | 6         |
| Cash brought over from various Causes, Matters, and Accounts, in lieu of Fees paid at Taxing Masters', and per centage on Lunatics' Income . . . . . | 14,616          | 18       | 8         |
| Cash paid in by Clerk of Enrolments . . . . .  | 4,354           | 10       | 10        |
| "                    Petty Bag Office . . . . .  | 276             | 8        | 4         |
| Poundage received under the Winding-up Act . . . . .   | 671             | 11       | 4         |
| Cash paid in by the Commissioners of Inland Revenue in respect of Money received by them for Chancery Fee Fund Stamps . . . . .                      | 75,905          | 1        | 6         |
| Cash brought over from Account of Moneys arising from Sale of Six Clerks' Office . . . . .   | 44              | 4        | 0         |
| Surplus Interest brought over from Suitors' Funds, under 15 & 16 Vict. c. 87, s. 53 . . . . .  | 53,117          | 13       | 2         |
| Interest brought from Account of Moneys placed out to provide, &c., under 15 & 16 Vict. c. 87, s. 54 . . . . .                                       | 5,766           | 19       | 10        |
| Cash received from the Accountant-General for Brokerage, under 15 & 16 Vict. c. 87, s. 18 . . . . .  | 3,822           | 17       | 7         |
|  | <u>£180,081</u> | <u>6</u> | <u>10</u> |

Account of Monies placed out to provide for the Officers of the High Court of Chancery, from 25th November, 1853, to 24th November, 1854.

|   |          |    |    |
|---|----------|----|----|
| Cash : Interest carried over to the Suitors' Fee Fund Account, under 15 & 16 Vict. c. 87, s. 54 . . . . . | £5,766   | 19 | 10 |
| Stock . . . . .   | £201,028 | 2  | 3  |
| Cash : Dividends received during the Year . . . . .   | £5,766   | 19 | 10 |
| Stock . . . . .   | £201,028 | 2  | 3  |

## COUNTY COURTS.

NAMES OF JUDGES AND DATES OF CALL,  
With their former Appointments.

Circuit 1. Durham and Northumberland.—*James Losh*, Esq., Michaelmas Term, 1829; Judge of a Court of Pleas at Hexham, Steward of the Manor and Regality of Hexham, Alderman of Newcastle, one of the Commissioners of a Court for the Recovery of Small Debts until the passing of the County Court Act.

Circuit 2. Durham.—*Henry Stappilton*, Esq., Michaelmas Term, 1826; Recorder of Durham, and of Hartlepool, Assessor to the High Sheriff of the County of Durham, and presided over the County Court for the Trial of Causes, tried all Writs of Trial on Actions under 20*l.* and all Inquisitions, Commissioner of Bankrupts for the Durham and Barnard Castle Districts.

Circuit 3. Cumberland, Lancashire, Westmoreland.—*Theophilus Hastings Ingham*, Esq., May 2, 1834.

Circuit 4. Lancashire.—*John Addison*, Esq., Hilary Term, 1818; Recorder of Court of Pleas of the Borough of Clitheroe, Assessor of County Court of Lancashire, Commissioner of

Court of Bankruptcy for the Preston District, Judge of Court of Requests at Blackburn.

Circuit 5. Lancashire.—*William Adam Hulton*, Esq., Trinity Term, 1827; Judge of Bolton Court of Requests and Assessor to the Sheriff of Lancashire.

Circuit 6. Liverpool.—*Joseph Pollock*, Esq., 11th June, 1842; Deputy Steward of the Salford Hundred Court, and subsequently Judge of the Court of Record for the Hundred of Salford.

Circuit 7. Cheshire and Lancashire.—*John William Harden*, Esq., Michaelmas Term (20th Nov.), 1835.

Circuit 8. Manchester.—*Robert Brandt*, Esq., Easter Term, 1821; Judge of the Bury Court of Requests, Judge of the County Court of Lancashire and Assessor to the Sheriff, also a Commissioner of Bankrupts.

Circuit 9. Cheshire, Derbyshire, Lancashire.—*Joseph St. John Yates*, Esq., 1st May, 1835; Judge of the Court of Requests at Glossop.

Circuit 10. Lancashire and Yorkshire, West Riding.—*John Stock Turner Greene*, Esq., 27th of November, 1829; Judge of the Court of Requests of the borough of Rochdale.

Circuit 11. Yorkshire, West Riding.—*Edward Cooke*, Esq., 12th November, 1819.

Circuit 12. Yorkshire, West Riding.—*James*

*Stansfeld, Esq.*, not called to the Bar; Court of Requests for Halifax, Huddersfield, &c., under 2 & 3 Vict. c. 106.

Circuit 13. Yorkshire, West Riding.—*William Walker, Esq.*, Hilary Term, 1834; Judge of Courts of Request at Rotherham, Yorkshire; Gainsborough, Lincolnshire; Retford, Worksop, Tuxford, and Bawtry, Nottinghamshire.

Circuit 14. Yorkshire, West Riding.—*Thomas Horncastle Marshall, Esq.*, Michaelmas Term, 1821; Deputy Steward and Judge of the Court of the Honor of Pontefract: Judge and Chairman of the Barnsley Upper and Lower Courts of Requests.

Circuit 15. Yorkshire, East, West, and North Ridings.—*Alfred Septimus Dowling, Esq.*, S.L., 18th June, 1828.

Circuit 16. Lincolnshire and Yorkshire, East and North Riding.—*William Raines, Esq.*, 22nd May, 1833; Assessor of a Court of Requests at Hull, and Deputy Recorder of that borough.

Circuit 17. Lincolnshire.—*John George Stapylton Smith, Esq.*, 26th November, 1830; Commissioner of Bankrupts, High Steward of the city of Lincoln, Judge of the Borough Court, Foreign Court, and the Court of Requests; Judge of the Sleaford Court of Requests.

Circuit 18. Nottinghamshire.—*Richard Wildman, Esq.*, 20th November, 1829; Judge of the Nottingham and of the Eckington and Dronfield Courts of Requests.

Circuit 19. Derbyshire and Staffordshire.—*Joseph Thomas Cantrell, Esq.*, 22nd November, 1831; Judge of the Wirksworth Court of Requests, and the Staffordshire Potteries Court of Requests.

Circuit 20. Leicestershire, Lincolnshire, and Rutlandshire.—*John Hildyard, Esq.*, Trinity Term, 1821.

Circuit 21. Warwickshire.—*Leigh Trafford, Esq.*, Easter Term, 1826; Judge of the Ashton-under-Lyne Court of Requests, Hyde Court of Requests, Warrington Court of Requests, and Court of Requests for the Prestbury Division of the Macclesfield Hundred in the County of Chester.

Circuit 22. Leicestershire, Northamptonshire, Oxfordshire, Warwickshire, Worcester-shire.—*Frederick Trotter Dinsdale*, 24th May, 1834; Judge of the Oldham Court of Requests.

Circuit 23. Herefordshire, Worcestershire.—*Benjamin Parham, Esq.*, 4th May, 1827; Judge of the Roborough Court.

Circuit 24. Herefordshire, Monmouthshire, Radnorshire.—*John Maurice Herbert, Esq.*, 8th May, 1835.

Circuit 25. Staffordshire, Worcestershire.—*Nathaniel Richard Clarke, Esq.*, S.L., Michaelmas Term, 1811; Judge of the Court of the Honour of Burton-upon-Trent.

Circuit 26. Staffordshire.—*Robert Griffiths Temple, Esq.*, 7th Feb. 1825.

[To be continued.]

## RETURN IN BANKRUPTCY.

FROM a return to the House of Commons, ordered to be printed 20th March, it appears that—

|  |         |    |    |
|--|---------|----|----|
| There has been paid in to the  | £       | s. | d. |
| General Account of Bankrupts' Estates, for the year ending 31st Dec., 1854, by official assignees and others | 755,108 | 10 | 2  |

|  |        |   |   |
|--|--------|---|---|
| Proceeds of sale of stock from Bankruptcy Fund Account | 17,575 | 0 | 0 |
|--|--------|---|---|

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£772,683 10 2

|                                      |         |    |    |
|--------------------------------------|---------|----|----|
| Paid out by order of Lord Chancellor | 70,000  | 0  | 0  |
| Of Commissioners                     | 163,343 | 14 | 11 |

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£233,343 14 11

|   |         |    |   |
|---|---------|----|---|
| On the Dividend Account, there has been transferred | 524,372 | 8  | 6 |
| And paid  | 518,847 | 17 | 0 |

|   |     |    |   |
|---|-----|----|---|
| On the Unclaimed Dividend Account, there has been paid in | 751 | 18 | 0 |
|---|-----|----|---|

|   |        |    |   |
|---|--------|----|---|
| On the Chief Registrars' Account, there has been paid in by official assignees, interest, &c. | 63,100 | 15 | 0 |
|---|--------|----|---|

|                                 |        |   |   |
|---------------------------------|--------|---|---|
| Commissioners of Inland Revenue | 17,137 | 7 | 2 |
| Proceeds of Sale of Stock       | 13,931 | 2 | 6 |

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£94,169 4 8

The net balances on 1st Jan. last, were as follows:—

|                                      |           |    |    |
|--------------------------------------|-----------|----|----|
| General Account of Bankrupts' Estate | £         | s. | d. |
| Bankrupts' Fund Account              | 54,608    | 0  | 8  |
| Unclaimed Dividend Account           | 1,207,892 | 15 | 11 |
| The Chief Registrars' Account        | 2,187     | 19 | 3  |
|                                      | 10,622    | 16 | 8  |

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£1,275,311 12 6

The summary of the payments from the Chief Registrar's account is as follows:—

|                         |        |    |    |
|-------------------------|--------|----|----|
|                         | £      | s. | d. |
| Salaries                | 56,771 | 2  | 9  |
| Compensations (London)  | 8,861  | 8  | 8  |
| Compensations (Country) | 12,675 | 14 | 0  |
| Retiring allowances     | 3,350  | 0  | 0  |
| Expenses                | 6,684  | 11 | 7  |

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£88,342 17 0

## PROFESSIONAL LISTS.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 20th February, to March 23rd, 1855, both inclusive, with dates when gazetted.

Bray, Solomon, and Charles Bridges, Birmingham, Attorneys and Solicitors. March 13.  
Cooke, John, and John Rand Bailey, 10, Mitre Court Chambers, Temple, and Wallingford, Attorneys and Solicitors. March 6.

Gabb, Baker, and William Woodhouse Secretan James Woodhouse, Abergavenny, Attorneys and Solicitors. March 13.

Salter, George, and Thomas Marshall Cock-erill, Ellesmere, Attorneys and Solicitors. March 2.

#### PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recoveries' Act, with dates when gazetted.*

Clarke, Robert Eagle, Thetford, in and for the county of Norfolk. March 20.

Owen, Owen, Pwllheli, in and for the county of Carnarvon.

Smith, George, in and for the city of Durham, also in and for the county of Durham.

#### COUNTRY COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

*Appointed under the 16 & 17 Vict. c. 78, with date when gazetted.*

Marklew, Charles, Walsall. March 2.  
Southam, Thomas William, Uppingham.

### NOTES OF THE WEEK.

#### NEW MEMBERS OF PARLIAMENT.

John Lloyd Davies, Esq., for the Borough

of Cardigan, in the room of Pryse Lovedon, Esq., deceased.

Lewis Llewelyn Dillwyn, Esq., for Swansea, in the room of John Henry Vivian, Esq., deceased.

Peter Blackburn, Esq., for the County of Stirling, in the room of William Forbes, Esq., deceased.

Sir Stafford Henry Northcote, Bart., for Dudley, in the room of John Benbow, Esq., deceased.

William Edward Baxter, Esq., for Montrose Burghs, in the room of Joseph Hume, Esq., deceased.

George Stuckley Buck, Esq., for Barnstaple, in the room of John Laurie, Esq., whose election has been declared void.

#### LAW APPOINTMENTS.

Walter Berwick, Esq., Q. C., of the Irish Bar, has been appointed Third Serjeant, in the room of Mr. Jonathan Christian resigned.

Humphry William Woolrych, Esq., has been called to the degree of Serjeant-at-Law.

Mr. Frederick Charsley, of Beaconsfield, has been appointed Coroner for Buckinghamshire in the room of Mr. John Charsley resigned.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

#### Lords Justices.

*Thornhill v. Thornhill.* March 27, 1855.

**INCREASE OF ALLOWANCE TO SOLICITORS IN CAUSE ON PROCEEDINGS AT CHAMBERS.]**

*The two solicitors engaged in a cause met, and after considerable trouble, apportioned the money paid into Court by the receiver, between the freehold and copyhold estates, and thereby saving much time and expense: Held, that the Vice-Chancellor had jurisdiction under the Order of February 2, 1855, to increase the allowance directed by the Order of December 23, 1852.*

THIS was an application by desire of Vice-Chancellor Kindersley, as to the construction of the Order of February 2 last, which directs, that "where the preparation of any case or matter to lay it before the Judge in Chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the Judge to deserve higher remuneration than the ordinary fees, the Judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the Judge, specifying distinctly the grounds of such allowance, such farther fee not exceeding ten guineas as in his discretion he may think fit, instead of the fee of one guinea authorized in such a case by the

Order of the 23rd day of October, 1852." It appeared in this suit that certain estates consisted partly of freehold and partly of copyhold, and that great difficulty, on the payment of moneys out of Court, arose whether the moneys paid into Court by the receiver were in respect of the freehold or of the copyhold portion. The two solicitors, who were engaged in the cause, had met, and after much trouble made the necessary apportionment, thereby saving much time and expense, and an application was made for the allowance to both of a larger fee than that allowed by the Order of October 23, 1852.

Baily, in support.

The Lords Justices said, the question seemed to be, whether the definite article in the earlier part of the order could be read as if indefinite? The whole matter was in the discretion of the Judge, and the wider the interpretation the better, and the Judge could, in fixing the amount to be paid, also settle the sum to be paid to each; the Vice-Chancellor had, therefore, jurisdiction to make the order.

*Walham v. Goodier.* March 27, 1855.

**COURT OF CHANCERY (COUNTY PALATINE) ACT.—TRANSFER OF CAUSE BY CONTINGENT REVERSIONER.**

*A motion under the 17 & 18 Vict. c. 82, s. 8, to transfer a cause from the Court of the*

*Vice-Chancellor of the Duchy of Lancaster to this Court, by a defendant resident out of the palatinate and concurred in by two others, was refused, where such defendant was only entitled to a contingent reversion in one-seventh of the property, and held that the grounds of there being no Queen's Counsel attending the Duchy Court and that the costs would be less, were insufficient.*

THIS was a motion under the 17 & 18 Vict. c. 82, s. 8,<sup>1</sup> to transfer this cause from the Court of the Vice-Chancellor of the Duchy of Lancaster to this Court. The application was made by the party resident out of the palatinate entitled in reversion to one-seventh of the lands in question upon the death without issue of a person against whom a commission of lunacy was about to issue.

*Cairns, Karlake, and Druce* for three of the defendants, in support, on the ground that no Queen's Counsel attended the Duchy Court, and that the costs would be less.

The *Lords Justices* (without calling on *Little* for the plaintiff, *contra*) said, that the motion would be refused.

#### Master of the Rolls.

*Hughes v. Ellis.* March 1, 1855.

WILL.—CONSTRUCTION.—LAPSE OF GIFT BY DEATH BEFORE TESTATOR.

*A testator by his will, gave to his wife the residue and remainder of his real and personal estate, and her executors, administrators, and assigns, and if she should die*

<sup>1</sup> Which enacts, that "in all cases in which any person who may be a necessary or proper party to any suit or other matter in the Court of Chancery of the said County Palatine shall not be subject to the jurisdiction of the said Court, it shall be lawful for the Court of Appeal on the application of the plaintiff in such suit, or of any person to whom the conduct of such suit may have been committed, or of the party proceeding in such other matter, if that Court shall think fit, and according as it shall appear to that Court best calculated to answer the ends of justice, either to order and direct that the said suit or other matter be transferred to the High Court of Chancery, or otherwise to order and direct that such service as may be proper to be effected upon such person out of the jurisdiction of the said Court of the said County Palatine, and such application shall be made either *ex parte* or upon such notice as the said Court of Appeal shall think fit: Provided, nevertheless, that if such order for service shall have been made without notice to any person affected thereby, it shall be lawful for the Court of Appeal, upon the subsequent application of any such person, to make such order for transferring the said suit or other matter to the High Court of Chancery, or otherwise, as to the said Court of Appeal shall seem just."

*intestate, to his nephew and the plaintiff in equal shares, their heirs and executors: Upon the death of the wife before the testator, held, that the gift lapsed; and a demurrer was allowed without costs to a bill by the plaintiff claiming to be entitled to such moiety.*

THE testator by his will, gave to his wife the residue and remainder of his real and personal estate, and her executors, administrators, and assigns, and he directed that if she should die intestate, the same should go to his nephew and the plaintiff, share and share alike, their heirs and executors. It appeared that the wife predeceased the testator, and this bill was filed on his death by the plaintiff for a declaration, that she was entitled to a moiety of the residue.

*Eddis* for the administratrix and heir-at-law, in support of a demurrer to the bill; *Freeling* for the plaintiff, *contra*.

The *Master of the Rolls* said that the wife took under the will an absolute interest and power of disposition during her life and by will, and that on her death, in the testator's lifetime, the gift lapsed. The demurrer would be allowed, but without costs.

*Turner v. Letts.* March 24, 1855.

SOLICITOR FOR TENANT FOR LIFE.—LIEN ON DEEDS FOR COSTS AS AGAINST PARTIES IN REMAINDER.

*A solicitor was employed by the executrix of a testator to defend a suit for the administration of the testator's property, and of which she was executrix: Upon her death, held that he was not entitled to a lien for his costs on certain deeds deposited by her relating thereto, as against the parties entitled in remainder, and an order was made accordingly for their delivery up.*

IT appeared that, upon the plaintiff and her sister having filed a bill against Mrs. Richards, the widow and executrix of their father for an account of certain property, to which they were entitled on her death, Mrs. Richards had retained the defendant as her solicitor, and deposited with him certain deeds relating thereto. Mrs. Richards had since died, and the plaintiff took out letters of administration to her father, and filed this bill for the delivery up of the deeds, which the defendant resisted, claiming a lien thereon for his costs.

*Follett* and *M'Naghten* for the plaintiff; *Lloyd, R. Palmer, and White* for the defendant.

The *Master of the Rolls* said, that any claim which the defendant had only extended to the estate of Mrs. Richards and her interest in the deeds, and was merely a personal one on his client's estate, and could not create any lien as affecting the rights of any other persons entitled after her. The case was a very hard one on the defendant, who was undoubtedly entitled to expect his costs; but there must be a declaration for the plaintiff as asked.

**Vice-Chancellor Kindersley.***In re Pritchard's Trust.* Feb. 24, 1855.**WILL.—CONSTRUCTION.—SURVIVING TENANT FOR LIFE, OR TESTATRIX.**

*A testatrix, by her will, gave a sum of money to trustees in trust to invest the same and to pay the interest to her daughter Charlotte by equal weekly payments for her natural life, and after her decease to be equally divided between her (the testatrix's) surviving children in equal shares as tenants in common. It appeared that four children survived the testatrix, and that Charlotte survived the other three: Held, on petition, that there was a failure of the gift as the children who survived Charlotte were alone entitled.*

THE testatrix, by her will, gave a sum of money to trustees in trust to invest the same and to pay the interest thereon to her daughter Charlotte by equal weekly payments for her natural life, and after her decease to be equally divided between her (the testatrix's) surviving children in equal shares as tenants in common. The question now arose on this petition whether the children who survived the testatrix, or the tenant for life, were entitled? It appeared that four only of the children survived the testatrix, and that Charlotte survived the other three.

*Glasse and B. L. Chapman* in support.

The *Vice-Chancellor* (without calling on *Baily* and *Nicholls*, contra) said, that as the testatrix had only given Charlotte a life interest to be paid weekly, it showed she intended to limit her interest to such payment, and that the children surviving such daughter were alone to be entitled; and there being none, the gift had failed.

*Wood v. Tayler.* March 10, 1855.**MASTER'S REPORT OF RIGHT OF DEFENDANT DISCLAIMING BY ANSWER.**

*The Master reported that a defendant, who had disclaimed by his answer, was interested in part of the property: Held, on further directions, that as the answer still remained on the file and the defendant continued a party to the suit, he was barred, notwithstanding the Master's report of his right.*

IN this suit, it appeared that a defendant had disclaimed by his answer, but he was still retained as a party thereto. Upon the Master having reported that he was interested in part of the property, he now claimed the same on further directions.

*Baily, Glasse, Piggott, Bird, Rogers, Forster, and Rastrick* for the several parties.

The *Vice-Chancellor* said that as the answer still remained on the file, the defendant's claim was barred, notwithstanding the Master's report of his right.

*Moody v. Bannister.* March 24, 1855.**SETTING ASIDE DEED.—ABSENCE OF LEGAL ADVICE.—IGNORANCE.—COSTS.**

*A deed of release executed in February, 1847, by the plaintiff releasing all further right in her father's property, in consideration of advances made to her by her sister, who proved his will, was set aside, where it clearly appeared she had no legal advice, but without costs, on the ground she had improperly also grounded her claim on her having executed in ignorance of the nature and effect of the transaction.*

THIS suit was instituted to set aside a deed of release, dated in February, 1847, and which had been executed by the plaintiff, releasing all further right in her father's property, in consideration of certain advances made to her by her sister, who alone proved his will, and in the whole amounting to about 900*l*.

*Teed and Tripp* for the plaintiff, on the grounds that she was ignorant of the nature and effect of the transaction, and had not the assistance of legal advice.

*Glasse, Speed, Wickens and Bristowe* for the defendants.

The *Vice-Chancellor* said, that the defendants must be absolved from all blame, but that as it clearly appeared the plaintiff had not, as she ought to have had, a legal adviser, the release must be set aside; but, under the circumstances that the plaintiff was wrong in resting her case on alleged ignorance, as she had ample time to understand what she was doing, and the defendants in resisting it on the want of legal advice, no costs would be given on either side up to the hearing.

**Vice-Chancellor Stuart.***Baker v. Bradley.* March 27, 1855.**SETTING ASIDE MORTGAGE.—PARENT AND CHILD.—UNDUE INFLUENCE.**

*It appeared that considerable sums of money had been expended in improving the estate to which the plaintiff was entitled in remainder on the determination of the life estate of his mother, and that he was resident with and dependent for his support on his parents: Held, that a mortgage entered by the plaintiff soon after coming of age to relieve his parents from difficulties would not under these circumstances be disturbed, and a bill to set the same aside was dismissed with costs.*

THIS suit was instituted to set aside two deeds, whereby the plaintiff had mortgaged an estate to which he was entitled in remainder upon the determination of the life estate of his mother, upon the ground that he had executed the same under parental influence soon after coming of age, and without being able to form an independent judgment as to the effect of the transaction.

*Wigram, Bacon, Malins, Elmsley, Elderton, Rogers, Hoare, Selwyn, and Foster* for the several parties. *Cwe. ad. vult.*

The Vice-Chancellor said, it appeared that the plaintiff was living with and dependent for his support on his parents, and that the father had expended considerable sums of money in improving the inheritance, and under these circumstances the arrangement to relieve his parents from their difficulties could not be regarded other than as a fair family arrangement. The case of undue influence therefore failed, and when the plaintiff insisted that if he had consulted some judicious friend he should have rather trusted to his interest in remainder than have joined in the mortgage, the means to maintain himself in the meantime were lost sight of. The bill would be dismissed with costs.

#### Vice-Chancellor Wood.

*Manzer v. Dix.* Feb. 20, 1855.

#### PRODUCTION OF DOCUMENTS ON SALE IN SUIT TO SET IT ASIDE.—PRIVILEGED COMMUNICATIONS.

*In a suit to set aside a sale under an assignment in trust to sell and pay off incumbrances, and for liberty to redeem, the production was refused, on the ground of privileged communications, as against the purchaser thereunder of all the notes and opinions of counsel on the abstract which had been furnished, and also of the instructions for the draft conveyance.*

THIS was a motion under the 15 & 16 Vict. c. 86, s. 18, in this suit to set aside a sale and for liberty to redeem, on behalf of the plaintiff, who had assigned certain leasehold estate in trust for sale and payment of the incumbrances thereon, for the production of documents, &c., by the defendant, who had purchased a part thereof. The motion was adjourned from summons at Chambers.

*Rolt and Goldsmid* in support; *Daniel and W. P. Murray*, contra, so far as related to the abstracts of title furnished, and which contained the opinion and notes of counsel, and to the instructions to prepare the draft conveyance.

*W. M. James* and *E. F. Smith* for other parties.

The Vice-Chancellor said, that in accordance with the decision of Vice-Chancellor Knight Bruce in *Pearse v. Pearse*, 1 De Gex and Smale, 12, the production of the instructions for the draft conveyance, together with all the notes and opinion of counsel on the abstract, could not be enforced.

*In re Picton's Estate, and the South Wales Railway Company.* March 5, 1855.

#### RAILWAY COMPANY.—LIABILITY TO COSTS, ON PETITION FOR TRANSFER OF FUND IN COURT, OF PARTIES TO ADMINISTRATION SUIT.

*A railway company took certain lands under the 8 & 9 Vict. c. 18, to which the petitioner was entitled for life, and the purchase-money was paid into Court and invested. A*

*suit had afterwards been instituted by the petitioner to administer the estate in which a decree was made for sale or mortgage: Held, that the railway company were not liable to the costs of the parties thereto who had been served with a petition for a transfer of the fund in Court, but only to those of the petitioner;—such costs are costs in the cause.*

THIS was a petition by the tenant for life of certain lands taken by the above railway company under the 8 & 9 Vict. c. 18, and of which the purchase-money had been paid into Court and invested, for the transfer thereof to the credit of a cause, which had been afterwards instituted for the administration of the estate of a testator, under whose will the petitioner derived his title, and in which a decree had been made for a sale or mortgage. The petition had been served on the parties to the suit, and the question was now raised whether the company were liable to pay their costs.

*Rolt* and *Southgate* in support; *Nalder* and *E. R. Turner* for the parties to the suit; *Osborne* for the railway company.

The Vice-Chancellor, after referring to *Melling v. Bird*, 17 Jurist, 155, said, that the company were only liable to pay the costs of the petitioner, and that those of the other parties would be costs in the cause.

*Woodward v. Eastern Counties Railway Company.* March 8, 1855.

#### RAILWAY COMPANY.—COSTS OF SUIT FOR INJUNCTION AND OF MOTION TO DISSOLVE.—LANDS' CLAUSES' CONSOLIDATION ACT.

*A railway company took possession of certain land belonging to the plaintiff without first complying with the requisites of the 8 & 9 Vict. c. 18, s. 95, and he thereupon filed a bill and obtained an injunction: Held, that on their complying with the requirements of the Statute, they were liable to the costs of a motion to dissolve the injunction, and with liberty to the plaintiff to apply in the suit as to the costs as he might be advised.*

IT appeared that, upon the defendants having taken possession of certain land belonging to the plaintiff, without paying the sum claimed for compensation into Court, or given the bond required by the 8 & 9 Vict. c. 18, s. 85, the plaintiff had filed this bill and obtained an injunction restraining them from proceeding with their works on the plaintiff's land.

*Rolt* and *Greene* now appeared in support of this motion to dissolve the injunction, upon the defendants having since complied with the requisites of the Statute.

*Daniel* and *Nalder*, for the plaintiff, urged that the company were liable to pay all the costs.

The Vice-Chancellor said, that the proper order would be to dissolve the injunction upon payment of costs, and with liberty to the plaintiff to apply in the suit as to costs as he might be advised.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

— Still attorneyed at your service."—*Shakespeare.*

SATURDAY, APRIL 7, 1855.

### ECCLESIASTICAL COURTS REFORM.

THE most important Law Reform which has been projected for many years past is that of the Ecclesiastical Courts, and especially the Testamentary Jurisdiction of those Courts, as well in the metropolis as in all parts of the country. The progress, from time to time, of this department of legal improvement or alteration is eminently remarkable. The Courts of Chancery, like the Ecclesiastical Courts, were anciently under the dominion and power of the Church, and whilst the Courts of Equity have become the Queen's Courts, and its Judges, officers, and practitioners are altogether laymen, the heads of the Ecclesiastical Courts, in whom the patronage was vested, and many of their well-paid officers, have been continued to the present time as dignitaries of the Church, but discharging their secular duties by lay-deputies.

Anciently the business of all the Courts of Law, was conducted by clerks in Court. The Attorneys retained by the suitors in general and actively engaged on their behalf, advised on and collected the materials of litigation, but the "side clerks" (as they were called) entered the pleadings and other proceedings on the rolls or records of the Court. As actions increased in number, and delay would have arisen by leaving the officers of Court to prepare the writs and enter the declarations, pleas, issues, and records, the Attorneys were allowed to do the work and charge the suitor, but the officers, nevertheless, received their fees which were allowed in assessing the costs. There were thus two classes of officers besides the Attorneys: the officers of Court who received fees for themselves, merely marking with an official stamp the legal document to be filed or entered, and the side clerks who had seats in the office of the Court, and through whom all proceed-

ings were taken. A side clerk acted for each suitor, but frequently the same side clerk being employed by the respective Attorneys of the parties, conducted the proceedings on both sides, and was the medium through whom all the formal steps in an action were communicated to the several Attorneys and brought before the Court.

By these means, and the employment of two sets of officers to do the work which one could effect, a large amount of fees was ingeniously collected. Besides the Attorney, who was chosen by the suitor to represent him, and who performed the duty of ascertaining the facts, collecting the evidence, and preparing the statement of the case, the Court could not be approached, either by the suitor or his Attorney, except through the medium of the side clerk, who took care that the forms of the Court were observed, and due notices given of the course of proceeding; and then came the official fee receivers, some of whom had several thousands a year, who were appointed under the patronage of the Judges and had little else to do than by their deputies to keep an account of their emoluments.

In the progress of events, many of the side clerks were long ago superseded, but large sinecures were carefully preserved. Then followed, in our own time, the abolition of the side clerks in the Exchequer of Pleas; and subsequently the side clerks on the Crown side of the Queen's Bench.

Next in order of official reform came the supersedeas of the middle men of our Courts of Equity, under the name of Six Clerks, Sworn Clerks, and Waiting Clerks, who, as most of our readers recollect, were pensioned off or compensated in the year 1842, and their duties transferred to the Solicitors.

Thus the practice of all the Courts of Law and Equity became vested in or entrusted to the Attorneys and Solicitors, and



the Barristers practised in all the Courts except in Doctors' Commons.

There remained the Ecclesiastical Courts to be dealt with, wherein a separate class of advocates and a separate class of Proctors were alone authorised to practise. It is here observable, that whilst in the Common Law and Equity Courts a usage had long been sanctioned by the Judges under which an Attorney or Solicitor divided the emoluments of business introduced by a country Attorney or Solicitor, the Proctors obtained a prohibition against any allowance whatever as between these respective practitioners, although the business was not only for the most part introduced by Solicitors, but they were held responsible for the charges, and consequently the client had to pay the costs of the Solicitor as well as the Proctor, which in contested cases was of large amount.

It has been long foreseen that this state of things, and the sinecure offices of large amount held under the patronage of the archbishops and bishops, could not be allowed to continue, after all the reforms which have taken place in the Queen's Superior Courts, and the time seems now to have arrived for effecting a new and complete arrangement.

The speech of the Solicitor-General, on introducing the Bill of the present Session, details the various plans relating to the Ecclesiastical Courts which have been submitted to Parliament during the last 30 years, embodied in 12 or more Bills, and recommended by several Parliamentary Committees and Commissioners.

In a subsequent page we have fully set forth the principal parts of the speech of the Solicitor-General in expounding his plan to the House of Commons, and it may be useful here to condense the several recommendations which are intended to be comprised in the Bill. It is proposed—

1. To vest the whole jurisdiction relating to wills and the granting of letters of administration in one metropolitan Court, deriving its authority from the Crown; presided over by a Judge of its own, with a distinct class of officers, and called her Majesty's *Testamentary Court*, with a complete and exclusive jurisdiction.

2. Attached to the Court will be a *Testamentary Office*, open to all persons to prove wills and obtain administrations without the necessity of employing either Solicitors or Proctors. Forms of proceeding will be provided, the present practice simplified and improved, and due precau-

tions taken in the conduct of the business, to ensure accuracy and prevent fraud.

3. All the *peculiar* and *Diocesan* Courts (there are four hundred in number), are to be abolished; and in their stead the Commissioners of the Court of Chancery for taking affidavits in the country will be authorised to receive wills and applications for administration, and forward affidavits and depositions to the Testamentary Office. There will be printed instructions on the mode of exercising their duties, with forms of affidavits, depositions, and declarations.

4. One of the practical improvements which has been proposed is, that instead of the wills being engrossed on parchment they will be *printed*, and a certain number of copies provided for immediate or future use.

5. On *Disputed Wills*, the proceeding will be taken in the form of a *Caveat*, and a *Claim* filed in the Court of Probate, and evidence taken *visd voce* or otherwise, according to the nature of the case.

6. Whilst the question of the validity of the will is under consideration, the property will be subject to the care of the Court, and applied according to its ultimate decision.

7. The Court will be a Court not only of *Administration* but *Construction*. Instead of the expense and delay of separate, and it might be the conflicting decisions of the present Ecclesiastical Courts and Courts of Equity, there will be one tribunal to decide the whole controversy.

8. The new Court will also be authorised to grant probates relating to *Real Estates*; and powers will be given to enable the Court to decide questions affecting, not only *Heirs* and *Devisees*, but parties claiming in *Reversion*:—a most important alteration of the law.

9. The great obstacle which has hitherto impeded the projected change, has been the *compensation* to be awarded to the Judges, Officers, Advocates, and Proctors. It is now proposed that, instead of the plan of last year, by which the Proctors were to be allowed to practise in common form business exclusively for 10 years, and in the mean time to act as Solicitors, without any other compensation; they are now to be paid annuities for life to the extent of one-half the amount of their present clear profits, and to be at liberty (as we understand) to practise immediately as Solicitors. No doubt, for a time at least, they will be preferred as practitioners in the new Probate or Testamentary Court, and it may be a

convenient arrangement to let the Proctors act as the agents of Attorneys and Solicitors,—dividing the profits of the business in the same manner as the London agents.

Such is the general scope of the proposed new plan of Testamentary Jurisdiction. If it can be carried into effect, we shall then have one uniform system of administering justice in all our Courts by the aid of the two great branches of the Profession,—the Barristers and Attorneys. Let us add a word of earnest hope, and trust that, in effecting this change, the just remuneration of the practitioners will be well considered, and those evils removed which have been equally injurious to the Suitors and the Solicitors.

Several members took part in the debate, particularly Mr. Napier, Mr. Malins, Dr. R. Phillimore, Sir J. Pakington, Mr. Hadfield, Mr. Bowyer, and the Lord Advocate, —to whose remarks we shall have occasion hereafter to advert; but at present we must confine our notice to the scheme propounded by the Solicitor-General.

#### PROPOSED ABOLITION OF THE ECCLESIASTICAL COURTS.

THE Solicitor-General proposes to vest the whole of the jurisdiction in relation to wills and the grant of letters of administration—that is to say, all the authority to deal with matters which, for want of a better phrase, he might call matters of testacy and intestacy—in one metropolitan central Court, deriving its authority from, and exercising its jurisdiction in the name of, the Crown. It would be a civil Court.

It would be necessary, according to his view, that this tribunal should be constituted in a Court which was a Court of *construction* and *administration*—that it should participate in the fullest powers of that Court, and be itself a portion of that Court, in order that the duties incidental to a Court of probate might be fully and efficiently discharged. The Court would therefore be established in the Court of Chancery, with a distinct Judge, clerks, and officers, and it would exercise a complete, though not exclusive, jurisdiction upon all subjects relating to the proof of wills, and the grant of letters of administration.

Attached to this Court, and also locally situated in London, he proposed to establish an office having large and comprehensive testamentary duties. He proposed to abolish the whole of the jurisdiction vested in the 300 or 400 *peculiar* and *diocesan* Courts scattered throughout the country, and which now presented the most grotesque and absurd spectacle

of divided jurisdiction that it was possible to conceive in a civilised country. The Testamentary office attached to the Court would be open to all her Majesty's subjects to come in and prove their wills or obtain letters of administration without the intervention—that was, the necessary intervention—of any solicitor, proctor, or agent whatever. It would be the duty of the officer at the head of this office to be armed with the means of giving information, and personally to supply explanations and information to all who thought proper to come there for the purpose of proving wills.

Persons living in the country, who were unable or unwilling to come personally to prove their wills at the office, might go to those Solicitors who were Commissioners of the Court of Chancery, and who would be able to receive their wills, to administer oaths, to supply information, to furnish the forms necessary for the proof of wills, and to transmit the necessary affidavits and documents to the Testamentary Office of Wills.

In order to show the efficiency and economy of the plan, he would describe the machinery that would be set at work by the Bill. He proposed that there should be issued to all the Commissioners for taking Affidavits in the Court of Chancery throughout the country—who were all persons especially recommended to the Lord Chancellor—printed forms of instruction with regard to the mode in which they were to proceed in the exercise of their duty. They would be furnished with printed forms of affidavits, of depositions, of declarations, in conformity with the provisions of the Act and the various circumstances of the case, the printed declarations to be signed by the party applying for proof of wills.

In former times, and before the Act 1 Vict. c. 26, the probate of wills might be described as a mere process for authenticating the instrument, but since the introduction of that law, which was perhaps not a very wise one, the duty partook somewhat of a judicial character, and was no longer confined to what might be described as a mere matter of business. When a will was now proved there were many duties to be discharged which required great attention and skill; a proctor or solicitor, upon receiving a will for the purpose of proving it, would have to ascertain whether it had been duly attested, whether it had been legally signed, whether it was free from marks of erasure, whether there was a special appointment of an executor or not—in short, which of the documents produced was the last will, and who was the person entitled to probate. He thought it was impossible that these important duties could be satisfactorily fulfilled unless what was done by the gentlemen who fulfilled them was subject to revision and further investigation by the Testamentary Office. He therefore proposed that the will, with the affidavits and the declaration, should

be sent by the solicitor or proctor in the country to the Testamentary Office in London, and that one of the registrars should examine them to see that such solicitor or proctor had properly performed his duty. If any question arose, the registrar would consult the principal registrar, and if any further difficulty presented itself the Judge at Chambers would be consulted; if the papers were correct, letters of probate would be sent back to the country solicitor.

The Solicitor-General next proposed to make an important, and, as he thought, most valuable alteration in the present law. He proposed that the process of *printing* should be resorted to, and that, instead of sending to the parties in the country an inconvenient, old fashioned, useless engrossed parchment copy of the will, there should be printed in the Testamentary Office at least 50 or 60 copies with the proper stamps affixed, one of which should be transmitted to the executor or his agent.

He believed that great advantages would arise from this plan, which had been applied with success in the Court of Chancery to the printing of bills. In the first place, it would produce much greater economy, for the charge for engrossing and making copies of a will at the present Prerogative office was 8*d.* per folio of 90 words, and as the same charge was made for entering it in the registry, scarcely any will was admitted to probate at a less cost than 1*s.* 4*d.* or 2*s.* per folio, while 100 copies could be printed and supplied at a charge of 9½*d.* per folio. The engrossed copy of a will, which was at present supplied, was not only cumbersome, but misleading, for he had found in his experience that many of the errors committed with regard to the directions given by a testator arose from the difficulty some persons had in extracting the meaning of an instrument written in an engrossing hand; he therefore anticipated that his proposition would prevent much mistake and litigation. Another obvious advantage would result from it. There were being established in the metropolis and in different parts of the country registries of documents, not only for the use of the parties interested in them, but also for statistical purposes, and without any additional expense printed copies of wills could be sent to the registrar of births, deaths, and marriages, and would, when collected, form an important addition to our statistical information. Copies might also be sent to Scotland and Ireland, and to the clerk of the peace of the place where the testator had last lived. This was the form in which he proposed that letters of probate should be obtained by persons who did not themselves go to the Testamentary Office. Those who went to that office to prove wills would find officers ready to swear them to their affidavits, and to give them every necessary information.

With regard to wills concerning which there was any dispute, he proposed that the same mode of procedure should be adopted as was now adopted in the Court of Chancery. If a suit should be necessary in order to determine the sanity of the testator, or any other question touching the validity of the will, it would commence by a simple claim in the Court of Probate, without any technicality, and would proceed either by *voir dire* examination or by written deposition.

At present, if a controversy arose touching the probate on the letters of administration, nothing could be done either towards collecting or administering the property until that controversy had been determined, and the result was, that in almost every case in which a suit was pending in the Ecclesiastical Court, it was necessary to commence another suit in the Court of Chancery, in order to obtain summary authority to prevent the estate from going to ruin during the litigation. But the jurisdiction of the Court was now imperfect, for it could give authority to collect, but not to administer property, and the affairs of an estate were necessarily suspended while the contested will was in litigation in the Ecclesiastical Court. If, however, there were added to the ordinary functions of the Court of Probate those of a Court of Administration, there was no reason why the ordinary duties of administration should not be performed while the question was in controversy, and it was accordingly proposed that the Court which entertained the question of what person ought to be admitted to probate, or of the validity or invalidity of a will, should be empowered to receive, to collect, and to administer the estate up to the time when it was handed over to the person entitled to it. He was anxious, therefore, that the Court of Probate should act with the authority of the only tribunal known to this country which could discharge at once the functions of a Court of construction and of administration. At present the Ecclesiastical Court had no power to construe a will, except for the purpose of determining to whom the probate should be given, and the interpretation of that Court was not binding upon the tribunal to which the will might afterwards be submitted for the purpose of ascertaining the rights of the parties interested under it. A Court of Probate which was not also a Court of Construction might therefore put an interpretation upon a will which might be afterwards held incorrect by the Court of final construction, so that if they wished to attain uniformity, to consolidate the jurisdiction of the Courts, not to drive people from one tribunal to another, they must give the new Court of Probate all the necessary functions and authorities to enable it to answer every purpose of the suitors resorting to it.

With this view he proposed to make that tribunal a part of the Court of Chancery, but

to give it a separate and independent character. Various improvements have recently been made in the Court with regard to the administration of estates. For, three or four years ago, when a person wished to enforce payment of a legacy of 40*l.* or 50*l.*, he was obliged to commence a regular suit, but now he had only to go to a Judge's Chamber and obtain a summons against the administrator or executor, without the intervention of a solicitor, at a cost of only 2*s.*

Then with regard to the manner in which the proposed Court was to act in cases of wills relating to *real estate*, the Chancery Commissioners had recommended that no distinction should be made between wills relating to personal and wills relating to *real estate*.

Though a probate, granted as it was, after due proof of execution of the will, was conclusive with regard to personal estate, yet it did not carry with it any evidence with regard to the title to *real estate*. In the present state of things, therefore, there was this great absurdity, that one will might give rise to half-a-dozen different and conflicting decisions, and that, after being carried through two different series of appeals, two different, final, conclusive judgments might be pronounced upon it by two separate Courts, each the highest Court of Appeal of its series. It was high time that such a state of things should be put an end to, and that there should be a power of arriving at some final conclusion with regard to the validity of wills affecting *real estate*. In the Bill of last year it was proposed that the probate of wills of *real estate* should be proved in like manner as the wills of personal estate; but that proposition was objected to from a fear that it would lead to the imposition of probate duty on *real estate*; and he had, therefore, omitted that provision from the Bill. There was, however, in existence in the Court of Chancery a procedure which would answer the same purpose, and would not be liable to the same objection. The Court of Chancery had long been in the habit of entertaining applications for the purpose of establishing wills of *real estate*, and that procedure had now come to be in use for all purposes having reference to the establishment of wills.

He proposed, therefore, that in the Court of Probate any person interested in *real estate* under a will, might have the power of bringing forward that will for the purpose of having it finally and conclusively established.

Under the present state of the law, in the case of a will creating successive estates in remainder, it was impossible ever to say with confidence that the question of the capacity or incapacity of the testator was finally decided, because, as each successive estate determined, the remainderman had a right to try the ques-

tion with the heir-at-law, and he proposed, therefore, to give this Court of Probate power to try these questions, and to pronounce conclusively on the validity of the will or the intestacy of the testator, &c. It would, therefore, be in the power of this Court finally to establish a will or to give the heir-at-law a certificate of intestacy on the part of the testator, which would make his title clear, and the result would be that this Court would have exclusive jurisdiction in regard to wills both of personal and *real estate*. Under the present state of the law, an executor completely represented the person of a testator of personal property, and could deal most completely with all the personal estate; but, with regard to *real estate*, there was no such person. Great inconvenience was frequently experienced from this want, and he therefore proposed that the Court of Probate should be enabled, in certain cases, where it might seem necessary or expedient, to appoint with respect to *real estate* a person whom he would nominate the "real representative," who should have a power over *real estate* exactly corresponding to that possessed by an executor over personal estate.

The next subject, and one of extreme importance, was, how did he propose to deal with the numerous class of persons—Judges, Registrars, Proctors, and other officers—who would be deprived of their offices by this sweeping and universal change? Before he spoke further on this subject, it would be necessary to remind the House of what had been done by Parliament in anticipation of the time when these reforms would take place. The attention of Parliament was first directed to these reforms by the Statute 6 & 7 Wm. 4, c. 77, by which it was enacted, that "in case the office of any Judge, Registrar, or other officer of any of the Ecclesiastical Courts of England or Wales, except the Prerogative Court, should become vacant during the period therein-mentioned, the offices should be taken subject to all the regulations and alterations which might thereafter be made by Parliament, and the officers should not have any vested interest in such office, and should not be entitled to any compensation should the office be abolished by Act of Parliament." The period mentioned in the Act was only 12 months, but it was renewed year after year until the 11th year of her present Majesty's reign, when the enactment was renewed in more stringent terms, for by the 10 & 11 Vict. c. 98, it was enacted, that "after the passing of the Act every Judge, Registrar, and other officer of these Courts should hold his office subject to all its rules and regulations, and should not have any claim or title to compensation in case the same office should be altered or abolished by Act of Parliament." It might occur to some honourable members that advantage might be taken of these enactments, and he was not prepared to say, that in some cases they would not be justified in so taking advantage of these Acts, for, on looking over the appointments in the Diocesan Courts, he found that a bishop had

appointed his son, a boy of 17, to the office of registrar: but, notwithstanding instances of this kind, he thought the House would, as a general rule, agree with him in thinking, as these Acts had never been acted on, and as they had been treated as a species of dead letter by this House, it would not be just for them to apply them as a bar to any fair and reasonable claims for compensation that might be put forward by those who would be deprived of their offices by the present Bill. He had examined this part of the subject with great care, and thought that he could, while affording great relief to the people of England, yet continue the fees some time longer, and so provide full and adequate compensation for all who were entitled to it, without resorting to those enactments which prohibited persons from claiming compensation. He would, in Committee, endeavour to make intelligible the whole of the figures on which this plan of compensation was based. He hoped he should succeed in this plan, as he thought it would contribute towards disarming that opposition which had for the last 30 years been successful in battling every effort which had been made to accomplish the reform which he now sought to carry into effect.

On the difficult and most important question of *Compensation* to the Judges, Officers, and Practitioners, the Solicitor-General thus stated his views:—

He had, in his plan of compensation, to begin with the name of an individual familiar to them all, who might perhaps not be thought entitled to full compensation. He would, however, first state that in the Prerogative Court a most reprehensible practice had existed of appointing a person to the office of registrar for life. This practice had not only been continued by archbishop after archbishop, but had been sanctioned by this House, so that it would now be idle and indecent to complain that this practice had been adopted. He found that the Commissioners, in their report, stated that the last grant of this office was made by Archbishop Moore in 1799, to the Rev. George, Robert, and Charles Moore—three sons of the archbishop, he presumed—and the Rev. Robert Moore had enjoyed the most perfect sinecure of 8,000*l.* a-year for the last 56 years. He thought, however, that it would be necessary, in the scheme of compensation, to provide full compensation of 8,000*l.* for the Rev. Mr. R. Moore during the few remaining years of his life. The returns made to Parliament in 1832 comprised the whole amount of the fees and income received by the Judges, registrars, and various other officers of the different diocesan, peculiar, and other Courts now proposed to be abolished. Now, if they deducted the fees of the registrar of the Prerogative Court, who would be provided for under the Bill, the income receivable by the Judges, Chancellors, registrars, and other officers of the diocesan Courts would amount to something less than 38,000*l.* Taking a large

margin to cover any errors that might creep in, the compensation to Mr. Moore would amount to 7,000*l.*, and the total sum requisite for the officers whose offices would be abolished would be 42,000*l.* The expenses of the Prerogative Office of Canterbury were 19,000*l.*; and as it was now proposed to augment the Testamentary Office, and thereby considerably increase its expense, it would be safe to compute the cost of the new office at 38,000*l.* The present Dean of Arches of the Prerogative Court of Canterbury might possibly retire from office; his salary was 4,000*l.* The aggregate of the sums above enumerated was something less than 100,000*l.*

There still, however, remained the case of the *proctors*, whose claim to compensation for probable loss of business ought to be fairly considered. Ultimately, no doubt, their apprehensions as to this loss would be found to be without foundation. When they emerged from the shade of Doctors' Commons into the light of day, and exercised their profession in a more extended arena, their experience, skill, and sagacity would enable them to compete successfully with solicitors now practising their profession in the Courts of Westminster Hall. At the same time, they were entitled to some reasonable equivalent for the risk of loss of practice which they would, at least, at first have to incur. This Bill, therefore, proposed to secure to these gentlemen for life an *annuity equal to one-half the clear income now received by each of them from the testamentary branch of their business*. That allowance, if it erred at all, would do so on the side of liberality, because the junior class of those who would receive it would, in addition, have a larger field open to their professional exertions by this measure, while the seniors of the body would receive a handsome retiring pension.<sup>1</sup> The number of proctors in London did not exceed 120, whose own estimate of their professional incomes, derivable from all descriptions of business, did not average more than 700*l.* per annum for each. Computing the incomes of the country proctors at the same amount, though they could hardly be so high, the compensation, at the rate of one-half their incomes, to be provided for the entire body would be 52,150*l.* Adding this item to the other charges before-mentioned for the Testamentary Offices, allowances to officers of diocesan and peculiar Courts, compensation to Mr. Moore, &c., the whole would amount to 144,150*l.* To meet this charge the annexation of the business of all the minor Courts to that of the Prerogative Court, and the continuance of the fees of the latter tribunal would, according to the returns, provide a fee fund of 74,740*l.*

The great saving to the public from the proposed change would be derived in this

<sup>1</sup> We presume the proctors are to be entitled to practise as solicitors not only in the new Probate Court but in all Courts, like attorneys and solicitors.—Ed.

manner:—Ordinarily speaking, when you proved a will, you must now employ both a proctor and a Solicitor, and, consequently, had to pay two bills of costs.

Under this Bill that would be no longer necessary. There would, therefore be a diminution of charge in this respect: but, with regard to the fees of Court, owing to the requirements of the compensation scheme, it was impossible at present to make any reduction, save in what was called the proctor's fee, which was now calculated according to a percentage on the stamp of letters of probate or administration, and which would henceforth be abolished. He proposed a substitute of this sort; that, whereas the proctor's fee at present upon a stamp of 10s. was 9s. 10d., there should be charged in future 3 per cent. upon the amount of the stamp, so that when the stamp was 10s. the proctor's fee would be 1s. 6d. He should proceed on the same scale to larger amounts, although in no case would the substituted fee exceed the present. Upon the whole, the income from the substituted fee would be about 158,660*l.*, to meet an annual charge of 144,000*l.* This would leave a margin of about 15,000*l.*, which would be applied to the Testamentary Fee Fund. He had been informed, through Mr. Graham, that there were at present ample fireproof rooms for the reception of all wills which now existed, or which were likely to exist for some generations to come.

With respect to the *advocates of Doctors' Commons*, he proposed they should be admitted to all the advantages enjoyed by barristers-at-law, and, no doubt, in the case of the more eminent, the Lord Chancellor would feel it his duty to confer the privilege of silk gowns.

They possessed some valuable property, and he proposed also that they should have the power of disposing of it. He desired also to see the *Court of Admiralty* thrown open to the Bar at large.

As it would not be right, in effecting a reform of this kind, to leave in existence matters which would interfere with the uniform character of the scheme, he had to inform the House that another important subject, the establishment of a tribunal for all matters relating to *marriages*, was under consideration. A Bill on the subject was very nearly prepared, and immediately after the Easter recess it would be brought into that or the other House of Parliament. Both measures, therefore, might be considered together, and both, after discussion, would, he hoped, be brought into such a shape as to admit of their being passed into law.

There was one provision which he regretted that he had not been able to introduce into the present Bill. In proposing to bring to a metropolitan tribunal the

whole of the jurisdiction now exercised by Courts of inferior jurisdiction in the country, he was aware of the extreme advantage of giving to persons in the country the benefit of local administration for small estates.

Therefore it had been his desire to confer on *County Courts* the power of administering to next of kin intestate property which did not exceed the value of 300*l.*, and also of adjudicating, on a remit for that purpose by the Court of Probate, on all contested matters where the estate to be administered did not exceed the like sum. Objections, however, were felt to this provision in quarters entitled to respect, on the ground that, however desirable such an enactment might be in the abstract, at present the condition of County Courts was not such as would enable them with benefit to exercise such jurisdiction. He was afraid that that objection might arise from the peculiar bias of a lawyer's mind, which was not satisfied in respect to any amendment of the law, unless a great amount of protection in the administration of justice was provided. A very high price for our advanced state of civilisation was paid in the great complexity and intricacy attending the administration of justice, but in reference to small estates he thought that they might be satisfied with the administration of what might vulgarly be called "rough and ready justice" sufficient for the purpose, and preferable to a costly administration, which, in cases of small properties not able to support great expenses in law proceedings, amounted to a denial of justice. He should, therefore, be glad to invite attention to this subject, though he could not now introduce any provision with respect to it, in order that the House might consider whether it would object to make the experiment he had suggested.

The Bill contained a clause for rendering one probate universal for England, Scotland, and Ireland, but he had some misgivings as to the practical working of that particular provision in respect to Scotland, and if, on discussion, it was thought that it would not work with facility, its application to Scotland might be omitted from the Bill.

In conclusion, the hon. and learned gentleman referred to the subject of the Church Discipline Act, with respect to which, he said, he had not now the authority of the Government to speak; but he had prepared a measure relating to it, which would be laid before the Government for their consideration. He moved for leave to bring in a Bill to abolish the jurisdiction of all the Ecclesiastical and peculiar Courts in England and Wales respecting wills and administrations, to establish a distinct Court of Probate and Administration, and otherwise amend the law in relation to matters testamentary.

## DEBATE ON BILLS OF EXCHANGE BILLS.

THE Debate on the second reading of these Bills took place on Wednesday, the 28th March, and we proceed to extract such parts on both sides of the question as appear to be essential for consideration before determining whether either of the proposed Bills should be adopted.

On the order of the day for the second reading of this Bill,

Mr. *Vance* said, this Bill would interfere with the general circulation of bills of exchange, and it was calculated to prevent a fair division of an insolvent debtor's estate, and it would interfere with the jurisdiction of the Irish Courts. It enacted that a registration office should be established for dishonoured bills of exchange, and that on notice being served on any party, if he was unable to get the leave of a Judge to prevent it, execution would be immediately issued against his effects. Now, by recent law reforms, as he had been given to understand, they could get judgment on simple contract debts in an undefended action against a debtor in eight days; but the law, fearing that an undue preference might be given to any party by means of a judgment, prevented execution issuing within eight days more, making sixteen days in the whole; and in the meantime, any person acting for the general body of creditors, could within twelve or thirteen days issue a fiat in bankruptcy, by which all the assets would be divided among the general body of creditors. Now this Bill enabled a creditor holding a bill of exchange to have a preference over all the rest of the creditors. A bill of exchange had never been anything higher than an acknowledgment of a simple contract debt. Then the 25th clause of the Bill interfered with the jurisdiction of the Irish Courts. It enabled a creditor in this country who happened to hold a bill of exchange to which anybody in Ireland was a party, to serve him with a notice, and eventually to sue out execution. Hitherto Irish endorsers had been very properly sued in Ireland. The Bill also inflicted another hardship on Irish creditors, by making it necessary that they should give security for costs, merely because they lived at a distance. A great deal had been said about frivolous defences being made to actions on bills of exchange. Now, he had been many years engaged in commercial transactions, and a great many bills had passed through his hands, and he never met with a case of frivolous defence being made to an action on a bill of exchange. There was one class of persons who met with frivolous defences, bill discounters, who did not give value for a bill; but in a fair mercantile transaction he never knew a case of a debtor defending frivolously an action on a bill of exchange.

Mr. *Muntz* said, this was the same Bill that was postponed last year for very obvious

reasons; there was no alteration. Since that time he had taken great pains to inquire from all he knew who were engaged in commercial transactions what the real bearing of the question was, and he found that, without exception, they all said there was no necessity for this Bill, and that the law as it now stood was sufficient to obtain all the ends that could be required, and that a great deal more evil would be done to society by this measure than by letting the law remain as it was. Take the position of endorsers of bills, if this measure passed. He would admit, for the sake of argument, that the acceptor and drawer of a bill were bound to provide for it; but look at the position of the endorsers. Why, every man of large business had passing through his hands scores of bills to the amount of many thousands, which he endorsed, conceiving them to be as good as Bank of England Bills. There came a panic, and this man had returned to him bills which he had endorsed to the amount, say of 50,000*l*. He might have ten times that amount of property, but which was not instantly available; and the time given by this measure—eight days—was not sufficient to enable him to turn round. If he were forced into the Bankruptcy Court, though he might have a large surplus before, he would be sure to be ruined. Why should a bill of exchange have this preference? What was it but an acknowledgment of a debt not quite due? It was said frivolous defences were made to actions on bills. Were there no frivolous defences to other actions? Under this Bill a man who wished to give a preference to a relative or friend had only to give him a bill and dishonour it, and then that relative or friend obtained execution and swept off the assets, to the exclusion of the rest of the creditors. This was one of the measures that arose from excessive legislation.

Sir *E. Perry* said, the principle of this Bill was in accordance with all the law reforms that had taken place within the last twenty years, and which were founded on the principles laid down by Mr. Bentham. What was the state of the law at present? It was obvious that all cases that came before Courts of Law were divisible into two great classes. The first class comprised all those cases in which there was some legal difficulty to be settled; and the second was where the suitor was seeking to enforce a remedy against his contracting party, who was unwilling to pay. It was obvious that these two classes of cases required a very different proceeding. In the first case every facility ought to be given to the suitor. Now, how did the law stand with regard to bills of exchange? When actions were brought on them the debtor was at liberty to put on the record any plea he thought proper; the plaintiff was compelled to employ counsel; and when the trial came on the defendant did not appear, and a verdict was taken as a matter of course. The cost to the plaintiff in a case of this sort was about 12*l*. It was clear that some remedy should be devised for such a

state of things. He would remind the House that the measure was already in existence in Scotland, and that it had been found there to operate greatly to the advantage of commerce. The other Bill would be a very great improvement of the law, but he should prefer that which had come down from the Lords, the one, namely, under discussion. If, however, the Government thought it desirable to send them both before a Select Committee he should be glad to have their respective details examined by such a tribunal.

Mr. Gurney did not think that a sufficient case had been made out for the proposed change of the law. As far as his own experience went, he had never known an instance in which loss had accrued from the delays of the present system. If a change were desirable, it would be the duty of the House to see that the remedy was not worse than the disease; and in the present instance he thought that that would be the case; for while the inconvenience was but the inconvenience of a few, the remedy would prove the ruin of many. With respect to the Law of Debtor and Creditor, there was no doubt that any alteration which enabled the latter to have a more speedy remedy was an improvement; but the same rule did not necessarily apply to the various relations of commerce. He thought that in the first place they ought to allow the debtor who might fall into difficulties a reasonable time to recover himself; and in the second place, that if he failed to do that, his assets ought then to be as equally as possible divided amongst all his creditors. The Bill was deficient in both these particulars. It might be said that a bill of exchange, being a formal document, ought to have a preference over an open account. Yet was not a cheque, or a bond, an equally formal instrument, and yet the holder of it would be placed in a worse position than the holder of a simple bill of exchange. Was that consistent? Again, it was impossible not to see that the Bill would afford the greatest possible facilities for fraudulent preferences. A man might say to one of his creditors, "I am in difficulties—draw a bill on me at a week;" and the creditor who had received that hint would get his debt in full at the expense of the rest. Again, he thought that they ought not to be entirely deaf to the considerations of mercy. He would certainly not plead for the insolvent, and still less for the fraudulent debtor; but the greater part of the retail trade of the country was carried on by means of small bills of exchange, and the honest and frugal tradesman was often placed in a situation of difficulty by an accidental failure in his month's takings. It might be said that cases of that kind must be left for arrangement between the drawer and the acceptor of the bill; but the bill might not be in the drawer's hand, for being himself in a strait he might have passed it to a third party. The present state of the law did not hold out any great inducements to proceed against the acceptor in such a case; but the proposed alteration would actually offer a premium for

harshness, because the holder of the bill would know that if he were disposed to be lenient, another creditor might step in and cut him out. The Bill would then be a great hardship to persons engaged in trade; and it would have a very prejudicial effect upon the public at large, because a very prudent man would hesitate before he signed an instrument which might lead to such serious results in case of any accidental negligence to take it up on maturity. He considered, in short, that the effect of the Bill would be materially to diminish the number of good bills, and at the same time to increase the number of bad bills in the country. For these reasons he should be glad if the bill were rejected; for, in endeavouring to obtain an imaginary improvement, he feared that they would be inflicting a real and substantial injury.

Mr. Napier thought that the House ought not lightly to reject a measure which had been found to work so well in Scotland, a country not likely to be led away by any crude or romantic notions on the subject of commerce. So far from throwing out the Bill, it ought to be the constant effort of the Legislature, first to assimilate the commercial law of the whole kingdom, and then to harmonise it with that of the commercial world. For his own part he did not think the Bill would lead to any increase in the number of bad bills; but that, on the contrary, the knowledge that a man would have to take the consequence of neglecting to meet his engagements would rather tend to make him careful how he entered into them. He did not think that it was any advantage to a debtor to have the means of raising a protracted and expensive defence; and he had been not a little startled to hear the honourable gentleman say that he had never known a case of loss from the delay of the law respecting bills. It was asked why the holder of a bill should have the preference over other creditors? The reason was clear. A bill of exchange was an acknowledged debt, and when, therefore, a man gave it, he ought to be prepared to pay the money when the bill became due. He should be sorry to inflict any hardship upon the honest debtor who might fall into temporary difficulties, but that was a question for the creditor, and not for the Legislature. The objection with respect to fraudulent preferences was more worthy of attention, and he should be glad if the Bill were sent before a Select Committee, with a view to meet cases of the kind hinted at by the honourable gentleman. He objected to that part of the Bill which referred to the jurisdiction in Ireland; but that was a matter for the Committee.

Mr. Mitchell repudiated the notion that bills of exchange and open accounts stood upon the same footing. A bill of exchange was a most solemn instrument, and ought never to be given unless the acceptor meant to fulfil it when it became mature. The honourable member for Lynn spoke of fraudulent preferences, and he was sorry that the learned gentleman opposite (Mr. Napier) had not seen that there



was nothing in the objection. The mere fact of accepting a bill for a week, and then stopping payment, would be a clear case of fraud. The transaction would at once be declared null by the Courts under the present law, and the debtor would also be punished by the withholding of his certificate. He (Mr. Mitchell) did not think that there would be any practical hardship under the Bill, because, if the debtor were really solvent, his correspondent would have no objection to renew his credit; and if the man were insolvent, the sooner he was brought up the better.

Mr. Spooner opposed the Bill, principally on the ground taken by Mr. Gurney—that it would operate unfavourably towards small traders. It was all very well for the great London merchants to support the measure, but in reality they knew nothing of its operation amongst small tradesmen. It was the interest of the Legislature and the country to encourage that class to make the best use of their capital. The Bill would prevent all prudent men from entering into such engagements, as it affected, and would materially derange, the commercial operations of the country. He had no doubt it would open a great door to fraud; it would give rise to fraudulent preferences without end. A creditor had only to take a bill of exchange, get it protested, go to a Judge's Chamber and get execution, and he might then defy all the rest of the creditors, and even bankruptcy would not set it aside. In nine cases out of ten it would be impossible for a party in this country to show that he had a good defence, in opposition to the granting of the Judge's order. The Bill created an unnecessary office, the registrar. He objected to the Bill because it gave to an arbitrary creditor the power of injuring an unfortunate debtor.

Mr. Baines referred to the contents of a petition from the Leeds Chamber of Commerce, who had considered the question very fully, who understood the whole commerce of the country, both high and low; and they declared their opinion, in which he entirely concurred from a long experience in Courts of Law, that the Bill would greatly simplify our law proceedings, and would meet the wishes of the mercantile community generally. If he had the choice, he should prefer the second Bill; but he was not without hope, were the subject referred to a Select Committee, of obtaining a Bill better than either of those now before the House.

Mr. Glyn did not entirely approve of the Bill before the House; but so many were the practical evils attending the present system of bill circulation in this country, that some remedy was absolutely necessary. He thought the proper course would be to send both the Bills to a Select Committee. At present the mode in which acceptances were given and taken was a positive evil. A single house in London on the 4th March last, had no less than 700 bills noted for dishonour; and on the same day it was calculated that no less than 5,000 bills in the city were noted. An evil of

this magnitude demanded the serious attention of the Legislature; some measures should be adopted to increase the validity of these instruments. When a man incurred the solemn obligation of accepting a bill, the Legislature ought to see that he was in a position to fulfil his obligations. Seeing how bills of exchange circulated throughout this country on the faith of the indorser, the Legislature was bound to see that bills were not carelessly or recklessly indorsed. They could not have a greater security against this than was given by the Bill before the House. So far from deteriorating bills of exchange, he was convinced it would raise their character. He knew that some of the largest houses in London connected with the inland trade were promoting this measure, and yet there was no class of men throughout the country who were to a greater extent simple contract creditors—a proof that no danger existed of that class of creditors being injured by the measure proposed. The only objection to the Bill which appeared to him to have any weight was that relating to fraudulent preferences; but as he found a provision against that in Mr. Keating's Bill, he hoped that both Bills would be allowed to go to a Select Committee.

Sir F. Thesiger said, two questions were raised by the Bill: whether the holders of negotiable securities ought to have a more speedy remedy against their debtors than other creditors had, and whether the Bill before the House provided the right machinery for that purpose. He had been much struck by the lucid and comprehensive speech of Mr. Gurney, and to some of his arguments no satisfactory answer had been given. He should be glad to know whether the petitioners in favour of the Bill were more in the habit of taking bills of exchange or giving them. They must also pay some attention to the honest debtor, and to creditors who did not hold bills. The effect of this measure would undoubtedly be to create a preference in favour of the holders of bills. Some gentleman said they had a preference at present, because these securities were assignable. He rather inclined to the opinion that this preference should not be given. He saw no reason why the holders of these securities should be entitled to a greater advantage over the simple contract creditors than the holder of a money bond or a mortgage. He did not think it at all desirable to give bill creditors the expeditious remedy proposed. Another ground for this conclusion was the effect the measure would have on the indorsers of bills. At present an indorser must have notice of dishonour before he could be made liable; but by the present Bill he might be proceeded against without any notice at all. The machinery provided by the Bill was not adapted to guard against the existing evils. In no class of actions were fraudulent and fictitious defences more commonly set up than with regard to bills of exchange; but it surely was not the proper remedy for this state of things to shut out any defence at all.

The Bill before the House enabled a party to take out a summons and get the execution suspended, on adequate security being given; but the second Bill, that of the hon. member for Reading, directed itself to the real remedy of fictitious defences. He found by a statistical return, that in 1854, the writs out of the Court of Exchequer were 41,850; of these in 14,512 cases there was no appearance; judgment by default in 9,841 cases; ditto in default of plea, in 1,992 cases; other judgments, 3,664; so that 11,833 of these cases were disposed of by judgment. In the Bill of the member for Reading, time was given (eight days) for the party to dispute the judgment, and on that ground he preferred that Bill. It was said the Scotch law had worked extremely well; but that was no reason for adopting in this country a system to which we were wholly unaccustomed, especially as all the evils might be guarded against by a slight extension of our own existing system. He would vote for the second reading of both Bills, with the view of their being sent to a Select Committee.

The *Lord Advocate* said, the Bill which came down from the House of Lords had his entire approbation. He believed that the application of the Scotch law to England would be productive of the greatest possible good, and with respect to those hon. gentlemen who thought that the nationality of England would be thereby affected, he begged to remind them that the law of Scotland was the law of the whole of the civilised commercial world. The bill of exchange was the currency of merchants, and instead of seeing any ground for maintaining the doctrine of the other side, his wonder was that England should have grown up to such a position of commercial wealth whilst bills of exchange remained in their present barbarous state. These bills of exchange circulated as money from hand to hand, they were assignable and discounted, and then, at a certain point, that which had before circulated as money represented it no longer. What was contended by the other side was that when a small trader promised to pay a bill of exchange he was not bound to keep his promise, because other people, through whose hands the bill passed, did not keep theirs. When it came to this point that a man was not able to meet his debt without having recourse to a fictitious defence, it was far better that he should go into the *Gazette* at once.

Mr. *Keating* said, that he introduced his Bill to prevent the scandal which too often took place in the Courts of Law under the present system. He thought that bills of exchange which came into the hands of the holders as sovereigns should not have any technical difficulties thrown in the way of their realisation. He was glad that he was not called on to defend the principle of the Bill, which seemed to be admitted on all hands; and as the author of one of the Bills under discussion, he was ready to accede to the proposal for referring it to a Select Committee. His objection to the Bill of the House of Lords went to the mode

by which it proposed to carry out the object in view.

Mr. *Murrough* observed, that there existed at the present moment a number of inconvertible bills of exchange which were recoverable by the agency of the Court of Chancery. But there was another class of bills of exchange which were drawn by the small traders, and which were never intended to pass as money till the goods they represented were sold. Now if these bills remained in the hand of the original holders this Bill might not produce much evil, but as it was well known that numbers of these bills got into the hands of warehousemen in London, and on their failure passed into the hands of others, who pressed on the small traders, he thought the House should be cautious before they agreed to the measure.

The *Attorney-General* said, that the question was one of commerce more than of law, but the lawyers were able to say from their experience that the present system of bills of exchange gave rise to actions of so fraudulent a nature that they were a scandal to the law, and unless great commercial evils arose from giving a more speedy and summary means of recovery than at present existed, he thought the House should afford such means. Now what should that remedy be? Both the Bills were based on the same principle. The Scotch system of protest and registration had its advantages, but it had its disadvantages also. He should support the second reading of both Bills, with the object of sending them before a Select Committee.

Mr. *M'Mahon* drew attention to the 12th clause of the Bill, which seemed to him to involve a violation of the principle of international law, for it gave a power of proceeding against the foreign merchant, and of arresting him when he appeared in this country.

Mr. *Keogh* concurred in the principle of the two Bills, and hoped they would be sent to a Select Committee. If they passed, it would be necessary to alter the 12th clause, so as to extend the power of the Irish Courts in reference to bills of exchange.

Mr. *Hankey* said, the strongest supporters of the measure were some of the largest drawers of bills of exchange in London, who felt the inconvenience of the present system. They found by experience the great advantage of the Scotch system over the English one.

Mr. *W. Brown* approved generally of the enactments proposed by these Bills; but he hoped that a clause would be introduced putting the holders of foreign bills of exchange on the same footing as the holders of inland bills.

Mr. *Mullings* drew the attention of the House to the fact that a society existed in the City of London called the "Trade Protection Society," which published and circulated throughout the country every week a list of judgments and bills of sale, which was most prejudicial to the interests of the country generally. As judgments and bills of sale affected real property only, there might not be much

harm in this; but if the same information were to be published and circulated with regard to bills of exchange and notes of hand, it would prove highly injurious, and therefore he hoped that a clause would be introduced to prohibit such a proceeding.

Mr. *W. Williams* said, this was entirely a commercial question, and his opinion was that if the Bill were to pass it would produce a most injurious effect on the inland trade of the country. It would affect those inland bills of exchange in the country which only represented genuine transactions. It was not very long since the home trade was carried on without the use of bills of exchange; the system when introduced was found to be very beneficial, but if these bills passed it would be almost entirely abandoned. The proposed system would give increased facilities to fraudulent preferences. At present, if a man dishonoured his bill he might be made a bankrupt in ten days, and his whole property equally divided amongst his creditors; but any person getting a judgment under the new system would be able to sweep away the whole property of the debtor.

Mr. *Sanders* opposed the Bills.

The House then divided, and the numbers were—

|                              |     |
|------------------------------|-----|
| For the second reading . . . | 114 |
| Against it . . .             | 58  |
| Majority . . .               | 56  |

Sir *F. Kelly* had no wish to revive the discussion. He had voted for the Bill on the understanding that it would be referred to a Select Committee. He thought the law required amendment.

The Bill was then read a second time.

#### BILLS OF EXCHANGE AND PROMISSORY NOTES BILL.

After a short conversation this Bill was also read a second time, and, with the former Bill, ordered to be referred to a Select Committee.

#### POINTS IN EQUITY PRACTICE.

##### WHERE PART OF ANSWER ENDORSED ON SKIN OF PARCHMENT.

AN answer was written on one skin of parchment and part was endorsed on the back. The *Master of the Rolls* said,—“I cannot go further than the Order of Lord Langdale [*Wood v. Swann*, 8th August, 1848]. If the defendant's solicitor will add a blank skin, by way of protection, and obtain the consent of the plaintiff, this answer may be filed.” *McKeone v. Seaber*, 18 Beav. 411.

##### DISCOVERY, ALTHOUGH TRANSACTION ILLEGAL.

When a defendant incurs no penalties, he

cannot resist a discovery by alleging the illegality of the transaction. *Williams v. Trye*, 8 Beav. 366.

##### RELIEF FOR BREACH OF TRUST IN ABSENCE OF REPRESENTATIVES OF ONE TRUSTEE.

Relief may be had for a breach of trust, committed by two trustees, against one, in the absence of the representatives of the other. *Strong v. Strong*, 18 Beav. 408.

##### WHEN TRUSTEES UNNECESSARY PARTIES TO SPECIAL CASE.

Where all persons beneficially interested are parties to a special case, the trustees ought to be omitted. *Darby v. Darby*, 18 Beav. 412.

##### WHEN BILL MUST BE FILED AND NOT CLAIM.

“If one simple issue on one single point is involved, then, though the evidence may be of considerable length, the Court will entertain the case by claim; but where the issues and facts are numerous, the Court requires a bill to be filed.” Per the *Master of the Rolls*, in *Jacobs v. Richards*; *Same v. Porter*, 18 Beav. 300.

#### LAW OF ATTORNEYS AND SOLICITORS.

##### SETTING ASIDE PURCHASE BY SOLICITOR FROM CLIENT.

THIS was an appeal from the decree of Vice-Chancellor *Stuart*, setting aside, at the suit of the heir-at-law of the vendor, Charles Holman, two purchases by a solicitor of real estate, on the ground that the relation of attorney and client subsisted at the time of the sales, and that the defendant had not duly protected the interests of the plaintiff's ancestor. It appeared that in 1846, there had been an attempted sale by auction of the whole of the property of Charles Holman, on which occasion it was put up for sale in nine lots, but that only one of the lots was then sold. In July, 1848, Charles Holman sold to the defendant four of the lots, the consideration being expressed to be 600*l.*, of which 260*l.* only was paid, an annuity of 40*l.* being granted for the vendor's life. In December, 1850, the remaining four lots were sold to the defendant, the consideration for which was an annuity of 26*l.*, on similar terms. The vendor died in February, 1852, and in the following June this bill was filed.

The Lord Chancellor, after stating the above facts, said :—

"The defence is,—1st, that the relation of attorney and client did not subsist; and 2ndly, that if it did subsist, the conduct of the defendant was altogether proper. Now, if the relation of attorney and client subsisted, the rule of law I take to be clear, that there is nothing absolutely preventing an attorney purchasing from his client, but then he assumes very heavy responsibilities; he cannot sustain his purchase, 'unless he can prove that his diligence to do the best for the vendor has been as great as if he was only an attorney dealing for that vendor with a stranger.' This is the language of Lord Eldon in *Gibson v. Jeyes*, 6 Ves. 266, 271; and a little further on, in the same page, the same very learned Judge says,—'But from the general danger the Court must hold that if the attorney does mix himself with the character of vendor, he must show to demonstration (for that must not be left in doubt) that no industry he was bound to exert would have got a better bargain.'

"What we have to decide, therefore, is,—1st, the question of fact, did that relation subsist which creates the obligation? and, 2ndly, if it did, then whether the defendant duly discharged the duties which attach upon such a relationship? The first question is one of fact, and the burden of proof is on the plaintiff. I think he has fully made out the proposition for which he contends,—namely, that the defendant was the attorney of Charles Holman within the meaning of the rule, and I arrive at this conclusion mainly from the defendant's own books. It appears from those books, that in 1836 the defendant acted as Charles Holman's attorney in an action against a person of the name of Nevill, and Charles Holman became indebted to him for the costs of that action; and in January, 1838, an arrangement was come to whereby the amount of those costs was fixed at the sum of 60*l*. The defendant, on that occasion, lent Charles Holman 40*l*., and took from him a note for 100*l*. at 5 per cent. interest, with a deposit of title-deeds. No further professional business occurred until the year 1843; in September, of which year the defendant was engaged in preparing a lease for Charles Holman, to a Mr. Ellis, of land at Wells for seven years. The next transaction was the sale by auction in 1846, and that led to considerable employment by Charles Holman of the defendant. It appears from the books of Mr. Loynes that he was employed by Charles Holman in the ordinary way in which a client employs a solicitor in the sale of an estate. I see the entry of the 17th April, 1846 :—'Holman—Attending you this day respecting a sale of your estate at Wells. Conferring thereon. Taking instructions to offer the same for sale,' &c., &c. It seems to me, therefore, that the defendant undoubtedly acted as the attorney for Charles Holman in every way in which an attorney could act for a party who was about to sell,

and did attempt to sell, his estate by auction. The auction took place on the 20th May, 1846. Only one lot, however, was actually sold, and from that time up to the 19th March, 1847, the defendant continued to act as the attorney for the vendor; he was engaged in carrying into execution the sale of the lot that was sold; he prepared the conveyance, and in short acted in every way as solicitor of the vendor in carrying that sale into execution. After the completion of that transaction, the defendant prepared an abstract of title of the eight remaining lots, evidently that they might be ready for any purchaser who might offer. This carried on the business up to the month of April, 1847; what he had done up to and at that time was clearly as the attorney of Charles Holman. So the matter rested until July, 1848, when the defendant himself purchased. Now it appears to me clear that the defendant was at that time the attorney of Charles Holman in the matter of this sale. He had been put in a situation to communicate with any purchaser who might offer, and, in truth, was the agent for the purpose of getting the estate sold. I do not attribute anything like personal misconduct to Mr. Loynes, the attorney, in thus communicating with Mr. Holman, the client; but the result was, that the attorney agreed to purchase from his client. If it was necessary to have additional proof beyond that already stated, to the effect that Mr. Loynes was the solicitor of Charles Holman at the time of his purchase, I think it is clearly made out by an entry in his own book of the 29th July, 1848 :—'Drawing purchase agreement for the sale of your premises at Wells to Mr. Loynes' (that is himself), 'and fair copy thereof.' Nothing can more completely indicate that he was at that time acting as solicitor for the vendor. If the defendant had not been himself the purchaser, but had been acting for some other person, it would have been, to all intents and purposes, the charge for acting as the solicitor of the vendor. I come, therefore, to the conclusion that he was the solicitor acting in the particular transaction for the vendor. That being so, the next question is, did he duly discharge his duty? Has he shown to demonstration, for that is what Lord Eldon says is necessary (though that must be taken with some qualification—demonstration, literally meaning mathematical certainty, is impossible in such cases), but has he shown, what for want of a better expression, we call moral certainty, that by no industry which he was bound to exert, he could have got a better bargain for Charles Holman? I think he wholly fails in showing that.

"As to the first purchase, I will assume that 600*l*. would have been a fair price for the property sold in July, 1848; but there was no 600*l*. paid. The real question is, whether 340*l*. was, under the circumstances, a fair price for the annuity of 40*l*. a year. I think it was not. The value of such an annuity on an average life of Charles Holman's age, according to the Government tables, appears to have been 380*l*.,

or, as the answer states, 340*l*. But, in fact, Charles Holman's life was not a good average life. The evidence—not to go into detail—satisfies me that he was desperately addicted to drinking. One medical witness says he was not; but then he says he was a man of very gluttonous propensities, and in the habit of eating to excess; that he was excessively indolent, and would not take proper exercise, and that his health failed in consequence. The defendant, Loynes, knew this, or might have known it by the smallest possible inquiry, yet the value of that life was calculated at about 10 years' purchase. In fact he only lived 3½ years after the first transaction, and a year and a few months after the second. His death within so short a period after the sale would not be material if reasonable pains had been taken to ascertain that there was nothing materially to alter the value of his life as calculated from the tables, but I cannot find that any steps were taken for that purpose; no inquiry was made to see whether his life was insurable. I believe, if such inquiry had been made, it would have turned out to be clearly an uninsurable life; and if the Solicitor had known that, he might well have bargained with a third person for an annuity greatly beyond the tables.

The second purchase took place in December, 1850, and was for an annuity of 26*l*. a year. Exactly the same observations apply to that transaction. The consideration is stated to be 208*l*. The value of such an annuity on the tables is said to be 232*l*., but it is quite obvious it would have been very much less if the state of health and the habits of Charles Holman had been taken into account.

"It is also to be observed, that the consideration is not correctly stated on the face of either of these deeds. The omission to state the exact circumstances of the case on the face of an instrument of this nature might be of very material importance, because, although the consideration of 600*l*. in the one case, and 208*l*. in the other, might be adequate and open to no suspicion; yet, if the transactions had been correctly stated and presented in their true light, very grave suspicion might afterwards be excited. I do not place very much reliance upon this, as there was no doubt in the hands of Charles Holman a bond which correctly stated what the real transactions were. Still that might have been lost or separated from the other securities; and it is in cases of this sort, therefore, essentially necessary, or very expedient at all events, that the exact truth should appear on the face of the instrument.

"The defendant adduced several cases, as showing that the law, as laid down in *Gibson v. Jeyes*, 6 Ves. 266, is not applicable to this case, but I do not think that any one bore him out in his proposition. The first case relied upon was that of *Montesquieu v. Sandys*, 18 Ves. 302; there the subject-matter of sale was of a very peculiar description, namely, an undivided fourth part of an advowson and right

of presentation to a rectory. The advowson was at the time of the sale vested in one of four co-parceners, a gentleman in the prime of life, 48 years of age, and very healthy; one of the co-parceners had the next presentation, the next turn after that being vested in the plaintiff. As was truly argued in that case, the value of such a property is entirely of a speculative nature, like a lottery ticket, the advantage depending entirely on the event, but it is in truth of no marketable value. Although it was bought by the attorney from his client, both of them had exactly the same knowledge in the matter; there was not the least pretence for saying that one had known more than the other. It was in evidence that the client had himself offered to sell his right for 100*l*. to the attorney. It turned out that the incumbent was accidentally thrown from his horse and killed, almost immediately after the transaction took place, and the person appointed as his successor was an old life; the result of which was, that what was purchased was in truth the next right of presentation after a bad life. That, however, was the effect of such a mere accident, clearly out of the contemplation of either party, that Lord Eldon thought it was a case in which the doctrine recognised in *Gibson v. Jeyes*, 6 Ves. 266, did not apply; that although the defendant did stand in the relation of solicitor to the vendor, yet that the parties in truth, as to that property, were dealing at arm's length.

"The defendant also relied on the case of *Cane v. Lord Allen*, 2 Dow, 289; but in that case I do not see how any question could have been raised. There the attorney had, by three separate transactions, purchased a very considerable estate from his client, it is true; but these transactions were unimpeached for upwards of 40 years, and admitted by the vendor to have been quite correct. Of one of the purchased estates the attorney could not obtain the immediate possession, because there was a life upon it. By the contract, therefore, he agreed to purchase it subject to the life; and if that transaction alone had been impeached, it might have been upon the ground of its being a purchase of a reversion under value. There was, however, no evidence of its having been sold at an under-value. Both in the Court below, in Ireland, and in the House of Lords, the three transactions were considered as forming one transaction, and it was thought that they ought all to stand or fall together. It was held that the relation of attorney and client did not exist, that there was no evidence of imposition, and that it being all one transaction there was nothing to impeach the conduct of the solicitor.

"The case before Sir James Wigram, of *Edwards v. Meyrick*, 2 Hare, 60, was also relied upon by the defendant; but in that case it would have been straining the doctrine to a most inconvenient extent to have applied it, because the full value had been given for the estate at the time when sold; but a short time after the sale an Act of Parliament passed for

making a railway, the result of which was that the value of the property, consisting of minerals theretofore unworkable, was most materially increased. Such a contingency any person purchasing property may always look to; but there being in that case no doubt that the purchase was perfectly honest and fair according to the then value, Sir J. Wigram held that that accidental circumstance—such a contingent advantage which might or might not have been in the contemplation of the parties—did not afford ground for imputing fraud or improper concealment to the attorney, or impeach his conduct as the purchaser. Every case must depend on its own circumstances: here, I think, the real neglect of duty was the not endeavouring to get, as in all probability the defendant might have got, a considerably higher annuity for Charles Holman, by reason of his intemperate habits. On that ground I think the defendant did not do his duty as he ought to have discharged it. I do not impute moral fraud to him; but in this Court such a transaction cannot stand, and the decree, therefore, of the Vice-Chancellor must be affirmed.”—*Holman v. Loynes*, 4 De Gex, M’N. & G. 270.

## PRACTICE IN CHARITY SUITS.

### RIGHT OF SUIT FOR BREACH OF TRUST AS TO RENTS DEVOTED TO POOR.

WHERE the rents of property are devoted to the use of the poor of a parish, the poor have no right of action or suit; for in the case of a breach of trust, affecting many persons, but properly of a public character, the Attorney-General alone can sue. *Attorney-General v. Magdalen College, Oxford*, 18 Beav. 223.

### INTERFERENCE OF ATTORNEY-GENERAL WITH RELATOR’S CONDUCT OF CASE.

Although in informations by relation, the Attorney-General allows the relators to conduct the case and to instruct counsel, such counsel appears for and on behalf of the Attorney-General. The Attorney-General may stop the information or regulate the mode of conducting it, but he cannot be heard to support views not in accordance with those adopted by the counsel who appears for him as informant, and whom he has permitted the relators to select and instruct. *Attorney-General v. Sherborne Grammar School*, 18 Beav. 256.

## NOTICES OF NEW BOOKS.

*Unsoundness of Mind in relation to Criminal Acts. An Essay to which the first Sugden Prize was this Year awarded by the King’s and Queen’s College of Physicians in Ireland.* By John Charles Buck-

nill, M.D., London, Licentiate of the Royal College of Physicians, Fellow of University College, and Fellow of the Royal Medical and Chirurgical Society, London, and Physician to the Devon County Lunatic Asylum. Highley, 1854, pp. 148.

THIS work is dedicated to Lord St. Leonards, who has instituted a prize in the College of Physicians in Ireland for an Essay on Unsoundness of Mind in relation to Criminal Acts; and Dr. Bucknill, to whom the first prize was awarded, has appropriately dedicated his essay to the noble lord. The author thus commences his work:—

“What is Insanity? what is responsibility? and its negation? what is the relation between the two? Such are the questions propounded by the subject for the Sugden Prize Essay.

“Questions they are which have for ages invited the critical and speculative power of physicians, moralists, and jurists, and have eluded the grasp of the most acute and the most erudite minds.

“The difficulty of solving these questions has not only been humiliating to the proud intellect of man, but has been attended with great practical inconvenience and with no inconsiderable or unfrequent danger of the exercise of human justice being perverted from the strict line of rectitude; of its being forced to deviate on the one side towards a mischievous and sentimental sympathy for peculiarities and infirmities of temper, or on the other towards an inflexible administration of penal and vindictive reprisals.

“The difficulty inherent in the question appears to depend upon the impossibility of establishing a strict relation between qualities of which the one is infinitely fluctuating and variable, the other is fixed and definite.

“Insanity is a condition of the human mind ranging from the slightest aberration from positive health to the wildest incoherence of mania, or the lowest degradations of cretinism. Insanity is a term applied to conditions measurable by all the degrees included between these widely separated poles, and to all the variations which are capable of being produced by partial or total affection of the many faculties into which the mind can be analysed.”

Dr. Bucknill arranges the subjects of his treatise in the following order:—

- “Range and boundaries of insanity.
- Degrees and nature of responsibility.
- Knowledge of right and wrong.
- Sensationalism and rationalism.
- Eclecticism most congenial to medical philosophy.
- The somatic and psychical schools of mental pathology.
- Freedom of will partially affected by insanity.

Absolute equity unattainable.  
 Ends of punishment.  
 Cousins' Opinion upon.  
 Definitions of Insanity—Guislain's.  
 Haslam's Denial of Sanity to all men.  
 Opinions of Johnson, Boileau, and Cicero.  
 Author's definition of insanity.  
 Habitual passion not insanity.  
 Pathological change the essential element.  
 Ethology of insanity.  
 Tests of insanity.  
 Effects of remedies.  
 Detection of cerebro-mental disease.  
 Opinions of Coke and Hale.  
 Of Erskine.  
 Of Gibbs and Mansfield.  
 Of Lyndhurst.  
 Sir A Cockburn's Defence of MacNaughten.  
 Exposition of the Law given by the Judges to the Lords.  
 Criticisms upon.  
 Knowledge of good and evil, Locke's definition of.  
 Bentham's Utility and Inconvenience.  
 Case in point.  
 Fiction that 'all persons know the Law' criticised.  
 Principle of duty the true foundation of obligation.  
 Responsibility dependent upon power, not upon knowledge.  
 Knowledge of Right and Wrong in the Abstract and in the Particular, Baron Hume upon.  
 Illustrations.  
 Collective opinion of Judges found untenable.  
 Delusion test, with illustrations.  
 The nature of delusion discussed.  
 Definition of delusion.  
 No single symptom of insanity decisive.  
 The group of symptoms needful.  
 Characteristics of delusions of the insane.  
 Difficulties of recognising cerebro-mental disease.  
 Aspects of mental disease, recognition of by experience.  
 Different practices in this and other countries in the examination of criminal lunatics.  
 Moral insanity.  
 Esquirol's Classification of Homicidal Insanity.  
 Impulsive insanity doubted.  
 Examples of Homicidal Insanity from Esquirol and Marc.  
 Examples given by Author.  
 Uncertain Action of English Law, Mr. Taylor's Reflections on.  
 Burton's case at Huntingdon.  
 Reports from the *Annales Psychologiques*.  
 Case from *American Journal of Insanity*.  
 Author's Classification of Homicides by the Insane.  
 Punishment of the Partially Insane, Pritchard upon.  
 Emotional theory of insanity.  
 Minor forms of insanity without delusion: pyromania.  
 Kleptomania.

Wordsworth upon.  
 Vampirism.  
 Suggested changes of legal procedure when insanity is pleaded.  
 Opinions of H. M. Inspectors of Asylums in Ireland.  
 Legal procedure in France.  
 The criminal ward at Bethlem.  
 Medical Amici Curie suggested like Masters of Trinity Company.  
 Public prosecutors needful."

Such are the comprehensive topics in this interesting volume, and we are induced by a recent case, which has excited considerable public interest, to give the following extracts in regard to a diseased condition of the mind which phrenologists term the *acquisitive propensity*, technically known as *cleptomania*, the instances of which Dr. Bucknill states are numerous and well-authenticated. He says—

"We have ourselves not unfrequently met with it in the wards of asylums. Our experience, however, would indicate that a mild and watchful system of correction, without wounding the sensibilities of the most humane, will effect a cure, permanently or transitory, according to the state of the cerebral organ.

"It is, however, probable that this form of insanity is more frequently than otherwise made use of as a somewhat doubtful shield to the honour of members of the higher classes of society, who, disregarding the dictates of prudence and of honesty, have indulged themselves in shoplifting, or any other unfashionable mode of appropriating property.

"We do not hear this plea urged in extenuation of deviations from honesty on a scale whose magnitude can redeem them from vulgarity; in great railway or gambling transactions, for instance. As far as punishment in this world goes, a man of position in society had better kill a fellow-creature in a duel, or seduce the wife of his bosom friend, than be detected in the attempt to steal a piece of jewellery or haberdashery, worth half-a-crown. Therefore, this plea is seldom heard of, except in delinquencies of the nature above referred to. The petty larcenies of the multitude being too numerous and unimportant to render them frequent objects of scientific discussion. The plea of insanity is not often made use of for minor crimes, because, if allowed, it might expose the offender to a far more lengthened imprisonment than the one which would be awarded to the offence of a sane man. Thus, in the case of Reynolds, tried at Bodmin, 1843, for an assault, the Judge said, 'If the prisoner were pronounced insane, he might be imprisoned for life, and therefore he did not think that finding would benefit him.' On a verdict of guilty being returned, the man was sentenced to 18 months' imprisonment.

"On these grounds it is that *cleptomania* is of little importance as a form of mental un-

soundness, in relation to responsibility for criminal actions. It is, however, of much interest to the psychopathist, as furnishing another proof of the existence of insanity without delusion.

"The following illustration is selected from Pritchard. A gentleman of large fortune, whose benevolence was proverbial, bore a character above all reproach, with the exception of petty thefts committed in shops. This unfortunate disposition soon became known among the shopkeepers of the town in which he lived; when he entered their shops, the well-disposed would remove the smaller articles from the counter, or would keep so strict a watch upon him, that it was almost impossible for him to exercise his diseased propensity; if, however, he succeeded, the article stolen was directly returned by the family, and compensation made, if demanded. For the purpose of extorting money, some heartless persons would put articles within his reach, and give him every opportunity to steal them.

"We are tempted to give one more illustration touchingly told in the following lines, from the Poem by Wordsworth, called *The Two Thieves*.

"The one yet unbreeched is not three birth-days old,  
His grandsire that age more than thirty times told;  
There are ninety good seasons of foul and fair weather  
Between them, and both go a pilfering together.

With chips is a carpenter strewing his floor?  
Is a cart load of turf at an old woman's door?  
Old Daniel his hand to the treasure will slide,  
And his grandson is busy at work by his side.

The pair sally forth hand in hand, ere the sun  
Has peered o'er the beeches, their work is begun;  
And yet into whatever sin they may fall  
This child but half knows it, and that not at all.

Neither checked by the rich nor the needy they roam,  
For the grey-headed sire has a daughter at home;  
Who will gladly repair all the damage that's done,  
And three, were it asked, would be rendered for one.

Old man, whom so oft I with pity have eyed,  
I love thee, and love the sweet boy by thy side;  
Long yet may'st thou live for a teacher we see  
That lifts up the veil of our nature in thee."

The Author has concisely and ably stated the principles of Medical Jurisprudence applicable to Insanity, and discussed most of the important State and other trials bearing thereon.

## BUSINESS OF THE HOUSE OF COMMONS.

It was resolved, on the 30th of March, that upon Thursday the 19th day of April next, and every alternate Thursday, till the end of May next, orders of the day shall take precedence of notices of motions without giving priority to Government orders, and that upon Thursday the 26th day of April next, and every alternate Thursday till the month of June next, the Government orders of the day shall take precedence of other orders of the day, and both shall have precedence of notices of motions; and that during the month of June next, and till the end of the Session, orders of the day shall have precedence of notices of motions upon Thursdays, and Government orders of the day shall have priority over other orders.

## NOTES OF THE WEEK.

### INDORSEMENT OF ORDERS ON COUNSEL'S BRIEFS.

THE Vice-Chancellor Sir R. T. Kindersley observed, on the 29th March, that he thought it so necessary and convenient that on the decision of any cases or any order being made, counsel should have time properly to endorse their briefs, that he should not only permit, but request them to take time to do so, as it frequently happened that a hurried endorsement being made caused a lengthened discussion as to what order was actually made.

### TAXING COSTS ON MOTIONS FOR DECREES.

Vice-Chancellor Wood, on the 9th March stated that, having had occasion to consider the course which should be pursued by the Taxing Masters in taxing costs of the hearing of a cause on motion, in *Creswell v. Mitchell*, after consulting with the other Judges, they had concurred in opinion that—

On motions for decrees the Taxing Master, in taxing the costs, should follow altogether the system of taxation on hearings on subpoenas to hear judgment, and not that used on motions.

His Honour adverted to the Lord Chancellor having decided as a matter of fiscal regulation, that the stamp is only that on a motion under the schedule of fees, and also to the circumstance that the solicitor's fee in attending Court on a hearing, is less than on a motion.

### ROLLS JUDGE'S CHAMBERS.

These Chambers will be closed on Good Friday, and re-open on Wednesday the 11th day of April inst.



## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lord Chancellor.

*In re Davenport Education Fund.* March 28, 1855.

## CHARITABLE TRUSTS' ACT.—VESTING ORDER.—LUNATIC TRUSTEE.—JURISDICTION.

Held, that the Vice-Chancellor Wood had power, under the 16 & 17 Vict. c. 137, s. 28, to make an order on summons at Chambers vesting charity funds amounting to 3,000*l.* in the new trustees, appointed upon the death of one and the lunacy of another.

In this case it appeared that the Vice-Chancellor Wood had settled a scheme for the administration of the above charity, and appointed two new trustees of its funds, which consisted of about 3,000*l.* consols, in the stead of a trustee who was deceased and of one who was a lunatic. The question arose, whether his Honour had power under the 13 & 14 Vict. c. 60, to make an order vesting the funds in the new trustees.

*J. Pearson*, in support, referred to the 16 & 17 Vict. c. 137, s. 28, which enacts, that "where the appointment or removal of any trustee, or any other relief order or direction relating to any charity of which the gross annual income for the time being exceeds 30*l.*, shall be considered desirable, and such appointment, removal, or other relief order or direction might now be made or given by the Court of Chancery in respect of its ordinary jurisdiction, or its special or statutory jurisdiction, or by the Lord Chancellor intrusted with the care and commitment of the custody of lunatics, it shall be lawful for any person authorised in this behalf by the order or certificate of the said board, or for the Attorney-General, to make application (without any information, bill, or petition) to the Master of the Rolls or one of the Vice-Chancellors sitting at Chambers, for such order, direction, or relief as the nature of the case may require; and the Master of the Rolls, or the Vice-Chancellor to whom any such application shall be made, shall and may proceed upon and dispose of such application in Chambers, save where he may think fit otherwise to direct, and shall and may have and exercise thereupon all such jurisdiction, power, and authority, and make such orders and give such directions in relation to the matter of such application, as might now be exercised, made or given by the Court of Chancery or by the Lord Chancellor, intrusted as aforesaid, in a suit regularly instituted, or upon petition, as the case may require."

The Lord Chancellor held, that the Vice-Chancellor had, under the section referred to, power to make the order.

## Master of the Rolls.

*Bold v. Hutchinson.* March 12, 13, 1855.

## HUSBAND AND WIFE.—CONSIDERATION FOR MARRIAGE.—MAKING GOOD DEFICIENCY.

Upon the marriage of the plaintiff and the testator's daughter, the latter had pledged

his word and honour that she would be entitled to at least 10,000*l.* on the death of his wife and himself. It turned out, however, on that event taking place that she would only receive about 5,000*l.*: Held, that the testator's estate was liable for the difference.

It appeared that upon the contemplated marriage of the plaintiff and the testator's daughter, the latter had pledged his word and honour as an officer and a gentleman that she would be entitled to at least 10,000*l.* upon the death of his wife and himself, and that in the disposition of his property all his children should share alike. The marriage was thereupon solemnised; but upon the death of the testator in 1845, and his wife in 1852, it was found the plaintiff's wife was only entitled to about 5,000*l.* and to a small legacy under the will, and this bill was filed to render the estate liable for the deficiency in the amount so promised.

*R. Palmer, Selwyn, and Freeling* for the plaintiff; *Roll and Toller* for the defendant.

The Master of the Rolls said that the testator had made the promises and representations in question in the belief of their truth, and with the intention they should be performed, and they were made pending negotiations between the marriage of his daughter and the plaintiff, and were in the nature of the consideration, and his estate was therefore liable.

*Sinclair v. Wilson.* March 19, 20, 1855.

## TRUSTEE AND CESTUI QUE TRUST.—REDEEMING SECURITIES PLEDGED WITHOUT KNOWLEDGE OF CESTUI QUE TRUST.

The plaintiff, the widow of a partner in a firm, was entitled to 3,000*l.* under his will, and another partner, who was a trustee, paid that amount into the M. bank, in 1846, with the plaintiff's consent to keep up the credit of the firm. He afterwards, without her knowledge, withdrew it, and paid it to another bank as a security for certain bonds. The firm met with reverses, and the trustee redeemed the bonds with the partnership assets. On the firm becoming bankrupt, held that this was no fraudulent preference, having regard to the relationship which existed of trustee and cestui que trust.

This was an appeal from the decision of the chief clerk in Chambers, from which it appeared that upon the death of Mr. Joseph Barrow (of the firm of Messrs. Barrow and Co., of Madras), his widow, the plaintiff, was entitled under his will to the ultimate interest in 3,000*l.*, and that Mr. Wilson, one of the partners, was the principal trustee, and had paid the amount into the Madras bank in 1846, with the plaintiff's consent, to keep up the credit of the firm. The money was, however, afterwards withdrawn without the knowledge of the plaintiff, and was paid into the Oriental

Bank to secure certain bonds due from the firm. It appeared that the firm subsequently met with losses, and Mr. Wilson redeemed the bonds with the partnership assets, and on their bankruptcy the assignees claimed the amount on the ground that the redemption of the bonds constituted a fraudulent preference. The chief clerk having decided in favour of the plaintiff's claim, this appeal was presented.

*R. Palmer, Kinglake, Cairns, Caillard, and Karslake* for the several parties.

*Cur. ad. vult.*

The *Master of the Rolls* said, that the bonds in question were clearly the property of the plaintiff, independently of the firm, being held in trust for her by Mr. Wilson, and had been pledged to the Oriental Bank without her knowledge or consent, and the trustee in redeeming had no intention of acting fraudulently towards the creditors, but merely in justice and honour to his *cestui que trust*. The certificate of the chief clerk would, therefore, be affirmed, but without costs.

#### Vice-Chancellor Kindersley.

*Gurney v. Gurney.* March 28, 1855.

WILL AND CODICILS.—ATTESTATION.—EFFECT OF S. 15 OF WILLS' ACT.

*A testator, by his will, gave inter alia a legacy to R. T., and the residue of his property in equal shares among his brothers and sisters for their several lives, and on their death their respective shares among their children. By two subsequent codicils, attested by R. T. and W. G. T. his nephew, he revoked certain legacies, giving others, but confirmed his will in other respects: On claim, held that the 7 Wm. 4, and 1 Vict. c. 26, s. 15, did not apply, by reason of the legacy to R. T. in the will being confirmed, or of the residue being increased by the revocation of the legacies given by the will, whereby the interest of W. G. T. was increased, —the section only applying where the attestation was to the instrument giving the legacy or the beneficial interest.*

It appeared in this claim that the testator, by his will, gave *inter alia* a legacy of 100*l.* to Mr. Richard Trye, and the residue of his property in equal shares among his brothers and sisters for their several lives, and on their death their respective shares among their children. By a subsequent codicil, he revoked certain legacies, but confirmed his will in other respects, and by a second codicil he gave other legacies and otherwise confirmed his will. These two codicils were attested by Mr. Trye and Mr. W. G. Temple, one of his nephews, and the question arose whether the 7 Wm. 4, and 1 Vict. c. 26, s. 15,<sup>1</sup> did not apply, as to Mr. Trye, in consequence of the confirmation of the will, and as to Mr. Temple, by reason of the revocation of the legacies increasing the residue.

<sup>1</sup> Which enacts, that "if any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of

*Glasse and Bevir* for the plaintiffs; *Baily, Bagshawe, Martindale, and Rogers* for the defendants.

*Cur. ad. vult.*

The *Vice-Chancellor* said, that the section did not apply where the legatee did not attest the instrument giving him the legacy or beneficial interest, and that the cases in question did not come within the operation of the Statute.

*Gurney v. Gurney.* March 29, 1855.

SALE OF LEASEHOLDS, WHERE POWER TO TRUSTEES TO DEMISE.

*Where a testator shows an intention to preserve leasehold property in specie, e. g. by conferring a power on trustees for the time being to demise, lease, and take premiums, the Court will not direct a sale for the purpose of distribution.*

A QUESTION was also raised in this case whether leaseholds, the rents of which were given to certain parties, should be sold immediately, for the purpose of distribution, the trustees for the time being empowered at any time to demise, lease, and take premiums.

The *Vice-Chancellor* said, that the power showed an intention to preserve the property in specie and not to sell, although the general rule was, that where there was a gift to one for life with remainders over, and the property was of a wasting character, it should be sold, and the proceeds invested, and the interest paid to the tenant for life; but that when there was a fair indication, as in the present case, of the testator's intention, the Court would carry it out.

#### Vice-Chancellor Wood.

*Savage v. Hutchison.* March 10, 1855.

AFFIDAVIT SWORN IN AMERICA.—JURAT.—ERASURE.

*An affidavit, verifying a certificate of death, was sworn to at New York by a markswoman before a notary public, and the jurat was in the common form used in America, and stated that the affidavit had been read over to the deponent who made her mark thereto. There was also an erasure, not verified by the notary, in the recital of the certificate which was annexed as an exhibit: The affidavit was directed to be filed.*

THIS was an application for a direction on or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife, or husband of such person, or any person claiming under such wife, or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will."

the Clerk of Records and Writs to file an affidavit in this cause verifying a certificate of death. It appeared that the affidavit was sworn at New York by a markswoman before a notary public, and that the jurat was in the common form used in America, and stated that the affidavit had been read over to the deponent who made her mark thereto.<sup>1</sup> It also appeared that there was an erasure, not verified by the notary, in the recital of the certificate, which was annexed to the affidavit as an exhibit.

*Rogers in support.*

The Vice-Chancellor granted the application.

*Bazalgette v. Lowe.* March 28, 30, 1855.

**TAKING BILL PRO CONFESSO AGAINST ABSCONDING DEFENDANT.—INSERTING NOTICE IN GAZETTE.—IRREGULARITY.**

*Notice of the plaintiff's intention to take a bill pro confesso against an absconding defendant under the 79th Order of May 8, 1845, was inserted in the London Gazette on Tuesday, Feb. 6, 13, 20, and 27—the day of motion being Thursday, March 8: Held, not a sufficient compliance with the order, there being more than seven days between the last insertion in the Gazette and the day for which notice of the motion had been given.*

THIS was an application as to the construction of the 79th Order of May 8, 1845, which directs that, "in cases where any defendant who, under Order LXXVII., may be deemed to have absconded to avoid or to have refused to obey the process of the Court, has had an appearance entered for him under Orders XXIX., XXXI., or XXXIII., and has not afterwards appeared in person or by his own solicitor, the plaintiff may cause to be inserted in the *London Gazette* a notice that on a day in such notice named (being not less than four weeks after the first insertion of such notice in the *London Gazette*) the Court will be moved that the bill may be taken *pro confesso* against such defendant; and the plaintiff is, upon the hearing of such motion, to satisfy the Court that such defendant ought under the provisions of Order LXXVII. to be deemed to have absconded to avoid or to have refused to obey the process of the Court, and that such notice of motion has been inserted in the *London Gazette* at least once in every week from the time of the first insertion thereof up to the time for which the said notice is given; and the Court being so satisfied, and the answer not having been filed, may, if it so thinks fit, order the bill to be taken *pro confesso* against such defendant, either immediately or at such time or upon such further notice as under the circumstances of the case the Court may think proper."

<sup>1</sup> The form commonly used is as follows:—

"Sworn, &c., the witness to the mark of the deponent having been first sworn that he had truly, distinctly, and audibly read over the contents of the above affidavit to the said deponent, and that he saw him make his mark thereto."—See Braithwaite's Oaths in Chancery, p. 16.

It appeared that the insertions had been made on Tuesday, February 6, 13, 20, and 27, and that notice of the motion was given for Thursday, March 8, and the question was raised at the Registrars' Office whether the insertion in the *Gazette* should not have been at intervals of seven days up to the day for which notice of motion was given.

*Eddis in support.*

*Cur. ad. vult.*

The Vice-Chancellor said, that the four weeks specified in the order must mean by intervals of seven consecutive days, and that therefore the Court must be satisfied of the notice having been inserted in the *Gazette* every seven days up to the day for which the notice was given. The plaintiff was accordingly not within the specified time, as the last insertion was in the *Gazette* on the Tuesday week, and there had been a longer interval than seven days.

### Court of Bankruptcy.

(*Coram* Mr. Commissioner Goulburn.)

*In re Digby.* March 30, 1855.

**SUSPENSION OF CERTIFICATE, WHERE NO BOOKS KEPT AND BAD DEBTS INCAUTIOUSLY INCURRED.**

*Where a bankrupt had kept no books, and had incautiously incurred bad debts, the certificate (of the 3rd class) was suspended for six months from the date of the petition, although there was no opposition.*

THIS was an application on behalf of a bankrupt, a miller at Birch, Essex, for his certificate, and to which it appeared there was no opposition.

The Court, upon its appearing that the bankrupt had kept no books and had incautiously incurred bad debts, suspended the certificate (of the 3rd class) for six months from the date of the petition for adjudication.

### Court of Insolvency.

(*Coram* Mr. Commissioner Murphy.)

*In re Weston.* March 30, 1855.

**PETITION UNDER PRISON ACT, WHERE PETITION UNDER PROTECTION ACT ON FILE.—PROTECTION.**

*Leave given to file a petition under the Prison Act, on behalf of an insolvent in custody, notwithstanding a petition under the Protection Act was on the file.*

*Quære, whether protection could be granted on such second petition.*

THIS was a petition to dismiss the petition for protection which had been presented in this case, on behalf of an insolvent who was in custody, but which it was doubtful whether it could be sustained, and for leave to file a petition under the Prison Act.

*Reed in support.*

The Court said, that leave would be given to file the petition, notwithstanding the petition under the Protection Act was on file, and that on the return the question would be considered whether protection could be granted on a second petition.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

— Still attended at your service. — *Shakespeare.*

SATURDAY, APRIL 14, 1855.

### THE TESTAMENTARY JURISDICTION BILL.

#### PROVISIONS RELATING TO THE JUDGES, OFFICERS, AND PRACTITIONERS.

We noticed last week the general scope of the proposed Reform in the Ecclesiastical Courts, and added a full report of the Solicitor-General's able speech in its support. The *public* questions having been thus stated, we may now, we trust, appropriately advert to several topics of *professional* interest, comprised in the measure.

Having been favoured with a copy of the proposed Bill, we are enabled to examine the various details of the measure, and in subsequent pages have given an analysis of all the clauses. In this place, we propose to cite somewhat fully the arrangements relating to the Judges, Officers, and Practitioners of the new Court.

The constitution and jurisdiction of the Court and its testamentary office,—the mode of proceeding,—the custody of wills,—the grant of probates and administrations,—the trial of disputed questions,—the appointment of real representatives,—the limitation of the times of proceeding,—and the regulation of fees and stamps, shall be noticed hereafter. We select for the present the various provisions regarding the appointment of the Judges and Officers, the Advocates, Proctors, and Solicitors of the Court, the Proctors and their compensations.

#### 1st. *The Judge.*

It shall be lawful for her Majesty to appoint, by letters patent under the Great Seal of the United Kingdom, a fit and proper person, being or having been a barrister-at-law of 15 years standing at the least, or an advocate of the Court of Arches of 10 years standing at the least, to be the Judge of the Court; s. 8.

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During the temporary or occasional absence of the Judge, it shall be lawful for the Lord Chancellor to direct that the Master of the Rolls, if he shall consent thereto, or any of the Vice-Chancellors, shall act as Judge of the Court; s. 9.

It shall also be lawful for the Lord Chancellor to direct that during the temporary or occasional absence of the Master of the Rolls, or any of the Vice-Chancellors, the Judge of the Court shall act as a Judge of the High Court of Chancery; s. 10.

The Judge to be appointed under this Act shall have the same powers and privileges, as well in the Testamentary Court as in the Court of Chancery, and shall be subject to the same provisions, duties, and observances, as the Vice-Chancellors appointed under an Act 5 Vict. c. 5, and he shall have rank and precedence next after the Vice-Chancellors; s. 11.

#### *Officers of the Judge.*

He shall have a secretary, usher, and trainbearer, to be from time to time appointed and removed by him at his pleasure; and the secretaries, registrars, and other officers of the Court of Chancery appointed to attend the Lord Chancellor, and the principal registrar, registrars, and other officers of the Testamentary Court appointed under the provisions of this Act, shall attend such Judge when sitting in Court or in Chambers, as circumstances shall require, and as the Lord Chancellor shall order or direct; s. 12.

#### *Salaries of the Judge and his Officers, and retiring Pension.*

The salary of such Judge, and the salaries of his secretary, usher, and trainbearer, shall be of the same amounts, and paid out of the same funds, and in like manner as the salaries of the Vice-Chancellors appointed under the 5 Vict. c. 5, their secretaries, ushers, and trainbearers are now payable; s. 13.

It shall be lawful for her Majesty, by letters patent under the Great Seal of the United Kingdom, to grant to such Judge on his re-

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signation of or ceasing to execute his office an annuity of the same amount, after the same period of service, under the same circumstances, and subject to the same conditions, and payable out of the same fund, as the annuity authorised to be granted to each of the Vice-Chancellors appointed under the Act of the 5 Vict. c. 5; s. 14.

Lord Chancellor may appoint persons to keep order in Court; s. 15.

#### *Supplying Vacancies.*

From time to time, when and as any vacancy shall occur in the office of the Judge who shall be appointed under the authority of this Act, by the death, resignation, or removal from office of such Judge or his successor for the time being, it shall be lawful for her Majesty, by letters patent under the Great Seal of the United Kingdom, to appoint a fit person, being or having been a barrister-at-law of 15 years' standing at the least, or an advocate of the Court of Arches of 10 years' standing at the least, to supply such vacancy; s. 16.

#### *Registrars and Clerks.*

There shall be the following officers of the Court:—One principal registrar; five registrars; and so many principal clerks, assistant clerks, officers, messengers, and servants as the Lord Chancellor, with the sanction of the Commissioners of her Majesty's Treasury, may from time to time think fit; s. 19.

If the Lord Chancellor shall at any time be of opinion that the business of the Court cannot be efficiently transacted without the appointment of additional registrars, it shall be lawful for him, with the sanction of the Commissioners of the Treasury, to increase the number of such registrars, provided that not more than two additional registrars shall be so appointed; s. 20.

The principal registrar and all the other officers of the Court, except as hereinafter mentioned, shall be appointed by the Lord Chancellor; s. 21.

Charles Dyneley, Esq., John Iggulden, Esq., and W. F. Gostling, Esq., the present deputy registrars of the Prerogative Court, shall be three of the first registrars of the Court:

William Abbot, Charles Desborough Bedford, and Decimus Townshend Dyke, the present principal clerks of seats in the Prerogative Court, R. Allum, F. Kruchenberg, J. Beams, S. Jarvis, I. Smith, W. S. Berry, S. Chadwick, G. Chadwick, T. Chadwick, H. Jones, H. Bolton, W. Kitching, W. Todd, the present assistant clerks of seats in the Prerogative Court, Richard Capes and Joseph Todd, the present record keepers of the Prerogative Court, Brooks, the present assistant clerk of records in the Prerogative Court, George Jervas Foster, the present clerk of the papers in the Prerogative Court, Charles Frederick Ford, the present assistant clerk of the papers in the Pre-

rogative Court, James Ford, the present clerk of the calenders in the Prerogative Court, Samuel William Shaw, the present clerk of the current wills in the Prerogative Court, R. Harrison, the present examiner of registered wills in the Prerogative Court, Thomas David Light, the present principal clerk of the stamp office department in the Prerogative Court, and William John Berry, the present sealer of the Prerogative Court, shall have in the Court offices of at least equal value with the offices they now respectively hold in the Prerogative Court; s. 22.

The principal registrar shall, subject to any orders to be made by the Lord Chancellor, have the general superintendence and control of the offices of the Court and the officers thereof, and the business transacted in such offices, and at the time of being appointed shall be or have been an advocate of the Court of Arches of 10 years' standing, or a barrister-at-law of the like standing, or have served as registrar of the Court for a period of five years; s. 23.

No person shall hereafter be appointed registrar or principal clerk to the registrars who shall not be or have been an advocate of the Court of Arches, a barrister-at-law, a proctor in the Courts at Doctors' Commons or in some Ecclesiastical Court in England or Wales, or a solicitor of the Court of Chancery: Provided, that any person who at the time of the passing of this Act is acting as registrar or deputy registrar of any Ecclesiastical Court, shall be eligible to the office of registrar, or principal clerk to the registrars; s. 24.

The principal registrar and registrars shall execute their respective offices in person, and shall hold the same during their good behaviour, subject to be removed by order of the Lord Chancellor for some good and reasonable cause to be in such order expressed; the other officers of the Court shall execute their respective offices in person, and not by deputy, and shall hold their offices during the pleasure of the Lord Chancellor; s. 25.

The servants and messengers shall be appointed by the principal registrar, with the approbation of the Lord Chancellor; s. 26.

#### *Advocates.*

All persons who at the time of the passing of this Act are advocates of the Court of Arches, shall be entitled to practise as counsel in any of her Majesty's Courts of Law or Equity in England or Wales, in like manner in all respects, and with the same rank and precedence, and the same eligibility to appointments under Acts of Parliament or otherwise, as if they had respectively been called to the degree of barrister-at-law on the day on which they respectively were admitted as advocates in the said Court of Arches.

#### *Admission of Proctors as Solicitors.*

Every person who at the time of the passing of this Act is actually admitted and practising as a proctor and notary in the Courts at Doc-

tors' Commons, or any Ecclesiastical Court in England and Wales, may, at any time after the passing of this Act, not later than one year thereafter, be admitted as a solicitor of the High Court of Chancery, upon the production of his admission as such proctor and notary, or an official certificate thereof, and upon the production of an official certificate that such admission continues in force, and upon signing the roll of the Court of Chancery, but not otherwise; and such admission shall entitle such proctor so admitted as a solicitor to be afterwards in like manner admitted, if he shall so think fit, and to be enrolled, as an attorney of her Majesty's Superior Courts of Common Law at Westminster; s. 28.

#### *Articled Clerks of Proctors.*

Every person who at the time of passing this Act is actually serving or has served as an articled clerk to a person entitled to act as a proctor in the Courts at Doctors' Commons, or in some Ecclesiastical Court in England or Wales, and entitled to take such articled clerk, and who has not been admitted as a proctor, shall be entitled, at any time within one year after his having completed his full term of service as such articled clerk, to be admitted as a solicitor of the High Court of Chancery, upon signing the roll of the same Court, and with the like privileges as if he had been admitted as a proctor and notary at the time of the passing of this Act; s. 29.

#### *Solicitors of the Court.*

All solicitors of the High Court of Chancery shall be solicitors of the Court, and all Commissioners for taking oaths in the High Court of Chancery shall be Commissioners for taking oaths in the Court; s. 30.

All the laws and Statutes now in force concerning attorneys and solicitors shall extend to solicitors practising in the Court; s. 31.

#### *Accountant-General and Taxing-Masters.*

The Accountant-General of the Court of Chancery and the Taxing-Masters of the same Court shall act as Accountant-General and Taxing-Masters of the Testamentary Court; s. 33.

#### *Compensation to Proctors.*

And whereas it is apprehended that the fees or emoluments of the persons now practising as proctors in the several Ecclesiastical Courts will be materially curtailed by the abolition of the exclusive rights and privileges which they have hitherto enjoyed as such proctors in the Ecclesiastical Courts in matters testamentary: be it enacted, that the Commissioners of her Majesty's Treasury, by examination on oath or otherwise, which oath they are hereby authorised to administer, may inquire into and ascertain the net annual amount of the profits arising from matters testamentary made by such proctors (not being solicitors or attorneys), on an average of five years immediately preceding the 1st January, 1854, or of such proportion of five years as shall have elapsed since such

proctor was admitted to practise in such Courts in respect to matters testamentary, and to award to every such proctor a sum of money or annual payment during the term of his natural life of such amount as the said Commissioners shall deem to be equitable: provided, that such sum of money or annuity so awarded shall not exceed in value one-half of the net profits derived by such proctor in respect of the matters aforesaid, upon the said average of five years immediately preceding the 1st January, 1854, or of such proportion of the said five years as shall have elapsed since the admission of such proctors to practise in the Ecclesiastical Courts; s. 107.

And whereas divers proctors practising in Ecclesiastical Courts now are or may at the time of this Act coming into operation be associated together in partnership: be it therefore enacted, that in all such cases the Commissioners of her Majesty's Treasury shall inquire into and ascertain the terms or conditions of such partnerships, and shall award compensation in respect thereof, as hereinbefore provided, to each of such partnerships, in like manner as if all the emoluments thereof had been derived by one individual, and shall apportion such compensation among the members of each such partnership, regard being had to the existing terms and conditions of the same; s. 108.

[We must defer the statement of the compensations to the Judges and officers of the abolished Courts.]

## ANALYSIS OF TESTAMENTARY JURISDICTION BILL.

### PREAMBLE.

Commencement of Act—Act to commence on or after 1st January, 1856, as her Majesty shall appoint; sect. 1.

Interpretation clause—Will; administration; real estate; personal estate; matters testamentary; the Court; the Prerogative Court; Lord Chancellor; sect. 2.

Jurisdiction of existing Courts—Testamentary jurisdiction of Ecclesiastical and other Courts abolished; sect. 3.

Testamentary Court; sects. 4 to 47.

Jurisdiction of — Testamentary jurisdiction vested in the testamentary Court; sect. 4.

To have equal jurisdiction with Court of Chancery with respect to matters within its jurisdiction; sect. 5.

Practice of, to be similar to the practice in Chancery, except as otherwise directed; sect. 6.

Sittings of, to be in London or Middlesex, as her Majesty shall appoint; sect. 7.

Judge of—Her Majesty empowered to appoint Judge of Court. During his absence, Master of the Rolls or one of Vice-Chancellors to act as Judge; sects. 8, 9.

Judge to sit in Chancery in absence of the Master of the Rolls and the Vice-Chancellors; sect. 10.

Powers of Judge—5 Vict. c. 5, same as the Vice-Chancellors; sect. 11.

Judges' officers in—To have secretary, usher, and trainbearer; sect. 12.

Salaries of Judge and officers—5 Vict. c. 5, same as Vice-Chancellor; sect. 13.

Judge's retiring pension—5 Vict. c. 5, same as Vice-Chancellors; sect. 14.

Court keeper—Lord Chancellor may appoint person to keep order in Court; sect. 15.

Vacancy in office of Judge of—Her Majesty empowered to supply same; qualification; sect. 16.

Seal of Court—Lord Chancellor to direct same to be provided; and may be broken, &c.; sect. 17.

Testamentary office; sect. 18.

Officers of; sect. 19.

Number of may be increased; sect. 20.

To be appointed by the Lord Chancellor; sect. 21.

Persons who are to be appointed registrars—Persons who are to be appointed to offices in the Court; sect. 22.

Principal registrar, duties and qualifications of; sect. 23.

Qualification of future registrars; sect. 24.

To execute office in person, and to hold office during good behaviour, and other officers during pleasure of the Lord Chancellor; sect. 25.

Servants and messengers of to be appointed by principal registrar, with approbation of the Lord Chancellor; sect. 26.

Advocates admitted to practise as barristers; sect. 27.

Admission of proctors as solicitors; sect. 28.

Admission of articled clerks to practise as solicitors; sect. 29.

Solicitors to practise in Court; sect. 30.

Laws in force concerning attorneys and solicitors extended to solicitors of the Court; sect. 31.

Orders of—Orders to be drawn up; sect. 32.

Accountant-General and Taxing Masters—Accountant-General and Taxing Masters of Court of Chancery to be officers of the Court; sect. 33.

Accountant-General; sect. 34.

Appeal from—Orders may be reversed, &c.; sect. 35.

Mode of proceeding to obtain probate or administration; sect. 36.

Where person applying for probate or administration resides out of limits of London District post; sect. 37.

Printed forms to be prepared; sect. 38.

Principal registrar to cause probate or administration to be granted; sect. 39.

Form of probate and administration; sect. 40.

Probates and administrations to be printed; sect. 41.

To be transmitted by registrar to certain offices; s. 42.

To be inspected on payment of fee; sect. 43.

Sufficient number of printed copies to be retained by principal registrar for inspection and sale to meet demands; sect. 44.

To be issued to any person applying for same on payment of such fee as the Lord Chancellor shall direct; sect. 45.

To be stamped; sect. 46.

Written copy may be obtained; sect. 47.

Particulars of probates and administrations, note of to be advertised in *London Gazette*; sect. 48.

Inventory of deceased's effects sect. 49.

To be filed by executor or administrator within 12 months; if neglected to be filed within such period, Court, on application of any person interested, may order same to be filed, with costs; sect. 50.

Practice as to caveats to correspond with practice as to caveats in the Prerogative Court; sect. 51.

Commissioners for taking Oaths to transmit caveats, and forms to be printed; sect. 52.

Citations—Instead of citation, summons to be issued by Testamentary Office, but according to practice of Prerogative Court; sect. 53.

Procedure in Testamentary Court—Suit to establish will, &c., may be instituted by bill or claim; sect. 54.

Demurrer for want of parties not allowed, but suit to proceed if Judge think fit; sect. 55.

Decree or order to bind all persons named or referred to, including persons under disabilities, &c., whether parties to suit or not; sect. 56.

Appeal, right of, saved; sect. 57.

Sureties in in administration bonds—21 Hen. 8, c. 5; 22 & 23 Chas. 2, c. 10; 1 James 2, c. 17, repealed; sect. 58.

Bond; sect. 59.

To duly administer, to be with one or more sureties, and in such form as the Lord Chancellor shall direct; to be in double penalty; sect. 60.

Court empowered to sign same; sect. 61.

Pending suits; sect. 62.

Written judgments; Judge of Prerogative Court empowered to deliver; sect. 63.

Power as to appointment of administrator; sect. 64.

Administrator *pendente lite*, may be appointed by the Court; sect. 65.

Receiver of real estate may be appointed by Court; sect. 66.

Remuneration to administrators and receivers; amount to be fixed by Court; sect. 67.

After grant of administration, no person to sue as executor; sect. 68.

Revocation not to prejudice actions or suits; sect. 69.

Wills, &c.—Court to have like authority over as Prerogative Court; sect. 70.

Forged will—Court may remove from registry or cancel a forged will, or restore a will which has been tampered with; sect. 71.

Production of instrument purporting to be Testamentary; practice as to; sect. 72.

Jury—Court may direct validity of a will to be tried by; sect. 73.

Attesting witnesses may be examined; sect. 74.

Real representative — Court may appoint same; sect. 75.

Empowered to sell and convey, and mortgage; sect. 76.

To represent real estate in same manner as executor or administrator represents personal estate; sect. 77.

Saving estates of persons dying before Act comes into operation; sect. 78.

Institution of suit or proceeding limited to twenty years; sect. 79.

Disability; sect. 80.

Fraud; sect. 81.

Void and voidable probates and administrations to be valid—Proviso; sect. 82.

Lord Chancellor empowered to make rules and regulations respecting mode of proceeding in; sect. 83.

Ecclesiastical Courts—Judges of, at request of principal registrar, to transmit all wills, &c., in their possession, &c., to the record keepers, to be deposited in Testamentary Office, there to be arranged for reference; sect. 84.

Penalty for default; sect. 85.

Temporary Custody of Wills, &c.—Lord Chancellor to arrange therefor, until same are deposited in Testamentary Office; sect. 86.

Temporary Officers—To be appointed by Lord Chancellor in place of officer becoming temporarily incapable, but not for a longer period than six months; sect. 87.

Vacations—Lord Chancellor empowered to direct registrars to discharge the duties of principal registrar during; sect. 88.

Officer engaging in other employment; may be removed by the Lord Chancellor; sect. 89.

Proctors, Attorneys, and Solicitors appointed to office, to cease to be proctors in the Courts at Doctors' Commons, and struck off the rolls, as the case may be; sect. 90.

Registrars empowered to administer oaths; sect. 91.

Forging or Counterfeiting Seal of Court—Penalty of: penal servitude for ten and not less than four years; imprisonment not exceeding three years, with or without hard labour; sect. 92.

Stamp duties on probates and administrations, not affected by Act; sect. 93.

Commissioners of Inland Revenue—Registrar to deliver copies of wills, &c., to; sect. 94.

Fees—Lord Chancellor to prepare table of, to be taken by officers of Court, with power to vary same as he shall think fit, and to publish same in *Gazette*; sect. 95.

Officer of the Court not to retain for his own use; sect. 96.

Nor accept gratuity; sect. 96.

Penalty, 500*l.* fine, and incapacity to hold office under the Crown; sect. 96.

Offenders to be prosecuted by information at suit of the Attorney-General, or by criminal information; sect. 97.

To be paid in stamps; sect. 98.

So much of the Suitors in Chancery Relief Act as applies to the collection of fees by stamps incorporated; sect. 99.

Except that separate accounts to be kept; sect. 99.

Commissioners of Inland Revenue to retain expenses, &c., and pay residue into Bank of England to an account, "The Testamentary Fee Fund Account;" sect. 99.

To be paid to the same account; sect. 100.

Stamps—Acts relating to, under Commissioners of Inland Revenue, incorporated; sect. 101.

Offices—Lord Chancellor empowered to provide; sect. 102.

Officers—Salaries of (Schedule D.); sect. 103.

Becoming infirm or incapable may be removed; sect. 104.

May be allowed retiring allowance not exceeding two-thirds of salary. Mode of compensating retiring; sect. 105.

Compensation to Judges and deputy judges, registrars, and other persons holding office in the Ecclesiastical Courts; sect. 106.

To proctors; sect. 107.

To proctors in partnership; sect. 108.

To Judge of Prerogative Court; sect. 109.

Persons appointed to offices not to receive same while holding such offices; sect. 110.

Viscount Canterbury, rights of saved; sect. 111.

Registry of Prerogative Court of Canterbury to vest in the registrar of the Court; sect. 112.  
Rev. R. Moore—Compensation to; sects. 113 and 114.

Time of payment of salaries; sect. 115.

Testamentary Fee Fund, if surplus, same to be paid into the Exchequer; if sufficient to defray salaries, &c., Commissioners of the Treasury to provide for same; sect. 116.

One probate or administration; sect. 117.

Of person dying domiciled in England, Wales, or Ireland to be valid in Ireland or Scotland; sect. 117.

In like manner probate or administration granted by her Majesty's Prerogative Court in Ireland to be valid in Great Britain; sect. 117.

Short title—"The Testamentary Jurisdiction Act, 1855;" sect. 118.

Limit of Act, not to extend to Scotland or Ireland; sect. 119.

#### SCHEDULES.

(A.) Form of affidavit and schedule.

Form of schedule of personal estate.

(B.) Forms of probate and letters of administration.

(C.) Particulars to be advertised.

(D.) Salaries of principal registrar and registrars.

#### NOTICES OF NEW BOOKS.

*The Law of Blockade, as contained in the Report of Eight Cases argued and determined in the High Court of Admiralty on the Blockade of the Coast of Cornwall.* By JAMES PARKER DEANE,



D.C.L., Advocate in Doctors' Commons, and of the Inner Temple, Barrister-at-Law. London : Butterworths. 1855. Pp. 193.

THIS valuable and appropriate collection of cases, comprises almost every point which can arise in an English Prize Court on questions of blockade. It relates 1st, to the authority of a Commander-in-Chief to impose a blockade, and the maintenance of a blockade. 2nd. The effect of Gazettes and other notices and acts of the Government subsequent and in relation to the blockade. 3rd. The effect of a notice of intention to impose the blockade prior to its actual imposition and after its actual and *de facto* establishment. 4th. The duties of Consuls in making the fact of blockade known. 5th. The distinctions between blockades by notification and blockades *de facto*. 6th. The general sources and principles of evidence in respect to notoriety, and the obligations and duties of neutrals in reference to that notoriety. 7th. The validity of a blockade established at the entrance of a Gulf; the effect of permitted egress and ingress, and of egress and ingress notwithstanding the alleged blockade, but without permission. 8th. The existence and meaning of Treaties.

These and other parts of the subject of Blockade are fully and minutely considered in the cases thus collected by Dr. Deane, and cannot fail to be peculiarly useful in the discussion of all other questions of this nature.

The Author's Introduction puts the reader in possession of the principal points which have been adjudicated upon in this branch of the law; and, although chiefly affecting our brethren of Doctors' Commons, must be interesting to lawyers in general. We therefore make the following extracts :

"First, then, it is clear from the following judgments, not to speak of earlier cases, that, even in European waters, the Commander-in-Chief has an implied authority and right to impose a maritime blockade. It may be fit, that, on coming near the places to which the blockade is to be applied, he should inform the Ministers of his own Government accredited to the neighbouring neutral States of his intention immediately to establish such blockade. But he should go farther; and, having first established the blockade, he should give notice to his own Government of the fact, and he should also give a similar notice to the Ministers at the neighbouring neutral powers. He, or the officers charged with the duty of maintaining the blockade, should inform in writing the Consuls of all the powers, neutral as well as

belligerent, residing at any neutral port near the scene of the blockade, of the fact of the blockade; and it would be well if, on arriving off the port to be blockaded, the senior officer of the blockading force were to send in a flag of truce, with notice to the authorities of the blockade being from that moment established. In no case should a blockade be allowed to continue as a blockade *de facto*, when it can be made a blockade by *Notification*. But in the interval between the establishment and the notification of the blockade every means should be used, that the fact may become speedily and widely and credibly known.

"The next question is, to what places may a naval blockade be applied? Much ingenuity has been formerly shown, perhaps one might say wasted, in attempts to prove that ports of a certain description only could be thus blockaded; but it is now well settled, that every place belonging to or in the occupation of the enemy, whether a fortified port, a port of naval equipment, or a purely mercantile and open port, or even a roadstead, may be blockaded. The only limits to the right of blockade with reference to the nature of the place blockaded are, first, that all the ports to which access is interdicted shall be enemy ports; and secondly, that the extent of coast interdicted, or the limits of the blockade, shall be within the power of the blockading force.

"It would seem scarcely necessary to explain the nature of the first of these restrictions, were it not for the attempt which was made last year to establish a blockade of the Russian ports in the Black Sea, by blockading the entrance into that sea, and the manner and time in and at which the blockade, or rather blockades, of the several ports in the Gulf of Finland were effected.

"In the Black Sea, the authorities seem to have thought that the belligerents had a right to establish the line of blockade, where it could be most easily kept, in utter disregard of all neutral and allied ports, which might be within that line. In the Baltic, or rather in the case of the Gulf of Finland, the Commanders conceived, if we may judge from their proceedings in first blockading one part of one side of the gulf, and then another part of the other side, and finally drawing a line across the upper part of the gulf, that the ships must be near the ports intended to be closed. An idea the more singular, because the Gulf of Riga was blockaded by closing the entrance into the gulf, and a line drawn from Dager-Ort to Hango Head in the first instance, and, supposing the force employed sufficient, would have closed all the ports within the gulf as effectually, and as legally, as a line drawn from Eckholm Light to Sweaborg, the measure afterwards adopted, in order to close Cronstadt and St. Petersburg.

"The true test is, that all the ports within the line of blockade shall be ports belonging to, or occupied by, the enemy. Thus, in the present war, Riga and Pernau were legally blockaded, by closing the only entrance to the Gulf

of Riga, navigable by ships. In the war with Holland, Amsterdam was held to be legally blockaded by closing the passages into the Zuyder Zee. So the Gulf of Finland might have been blockaded at once by a line across the entrance, and stationing ships in sufficient force, and in such a position as to render all egress or ingress dangerous.

"But it would not be lawful to blockade the entrance of a gulf within which were neutral ports; for instance, the Gulf of Bothnia would not be legally blockaded by closing the passages between Sweden and the Aland Islands, and the Aland Islands and the coast of Finland, unless both Russia and Sweden were at war with the power imposing the blockade.

"The same rule would seem to apply to rivers flowing through different States, some of which were belligerent, some neutral, and having ports on the river. It is true that Lord Stowell, though he had occasion to observe how severely the neutral cities connected with the Weser and Elbe were pressed upon by the blockade of those rivers, still considered that such a blockade could exist, however it might affect the commerce of the neutral towns situated on those rivers. But as it is a rule that the blockade should offer no obstruction to a neutral port, it may be doubtful whether the blockade of a river so circumstanced would, at the present time, be upheld. These considerations may perhaps be applicable to the Danube, yet the legal difficulties of imposing a blockade upon that river, in the actual state of the war, seem nearly insuperable.

"When once the blockade has been established, no ship with cargo, or in ballast, should, on any pretence whatever, be allowed to enter. For when there is such an actual investment of the port, if any of the blockading ships fail to enforce it, the blockade is so far relaxed. And if the blockade is not duly carried into effect by the ships stationed on the spot for the purpose, it is impossible for a Court of Prize to enforce it.

"But ships in ballast, the property of neutrals, having done no act in breach of the blockade, may come out at all times; and so may ships with a cargo put on board, or so much of the cargo as was laden in lighters ready for loading, before the blockade. And with respect to the evidence of time of loading, which much must be left to the discretion of the detaining officer, who must judge from all the circumstances of the case. Time, however, would afford some test of the time of loading; for if a ship, having fit wind and weather to leave a port blockaded, should not do so till a considerable time had elapsed since the blockade was imposed, there would be strong presumption that her delay was connected with the want of a cargo in the first instance, and the loading of it afterwards.

"Closely connected with the question of permitted egress and ingress, is the effect of a large number of vessels entering, or leaving a blockaded port, without being interfered with by the blockading ships. This is a question of

relative numbers; for if the number entering or leaving be large in proportion to the number prevented, a strong presumption is at once raised, that the blockade is not efficiently maintained, and, as a consequence, the blockade cannot have legal effect given to it.

"Hence, it is the duty of the Commander-in-Chief to order a sufficient force on the service, and the duty of the officers entrusted with that service, to keep on the station, and exercise such vigilance, that no ship shall break the blockade by egress or ingress, except through accident, as under cover of the night, or in fogs, or gales of wind, and so forth.

"Some discretion, however, is allowed to the Commander of the blockading force; and there is a difference in the consequences, whether ships are permitted to proceed unmolested in the first instance, or whether the Commander having seized all, and afterwards finding himself under difficulties in retaining possession of all, selects a certain number and dismisses the rest. If a captor has detained *A.* and *B.*, it is not an act of injustice to *A.* that he releases *B.* It can be no renunciation of the blockade, or of any other right of war as to him.

"By the Law of Nations, as administered in the British Courts of Prize, the sailing or prosecuting a voyage to a blockaded port, after a knowledge of an existing blockade, and with an intention to violate the blockade, is an offence punishable with confiscation. Hence, whenever any ports, harbours, or coasts have been declared to be in a state of blockade, the Commanders of her Majesty's ships of war are enjoined by Article X. of the Instructions, to stop all neutral vessels which they shall meet at sea, destined to any of the places blockaded; and if they shall appear to be ignorant of the existence of the blockade, and have no contraband of war on board, they shall turn them away, apprising them that the ports are in a state of blockade; and shall write a notice to that effect upon one or more of the principal ship's papers; and if any neutral ship, which shall appear to have been so warned, or to have been otherwise informed of the existence of the blockade, or to have sailed from her last port, after it may reasonably be supposed that notification of the blockade had been made public there, shall yet be found attempting, or intending to violate such blockade, such vessel shall be seized, and sent into some port within her Majesty's dominions for legal adjudication before the High Court of Admiralty of England, or some other Court of Admiralty duly commissioned to take cognizance thereof; provided, that if such ship or vessel be owned by subjects of France, the same shall be taken into France for adjudication.

"And if any neutral ship or vessel be found coming out of any blockaded port, which she shall previously have entered in breach of such blockade, or if she shall have any goods, or merchandise on board laden after knowledge of the blockade, such ship, or vessel, and the goods and other effects on board shall, in like

manner, be seized, and sent in for adjudication. But any neutral ship or vessel coming out of any such blockaded port, in ballast, or having only goods or merchandise on board laden before the knowledge of the blockade, shall be suffered to pass, except there be other grounds for detaining her, and a notice and warning shall be written upon one or more of her principal ship's papers, prohibiting such vessel from again attempting to enter such port during the existence of the blockade.

"It appears from this instruction, that all her Majesty's ships of war, and not merely those which may happen to form a blockading squadron, should, in case of a blockade, stop, visit, warn, and, if necessary, seize any neutral vessel, wherever met."

## OPINIONS OF THE PUBLIC PRESS ON THE BILLS OF EXCHANGE BILLS.

"THE continentalising, so to speak, of the laws of England, requires more attention than it seems of late to have commanded. Scarcely an alteration has been made of late years in our code without a further approach to that despotism in small matters which always characterises the legislation of the Whigs. The whole system of the County Courts, and the lawless Bankruptcy Statutes, are evidences sufficient of this, and might have acted as a warning against any attempt to push the practice further. A Bill has, however, been read a second time in the Commons, and agreed to be referred, with another, to a Select Committee, which tends to enable the holder of a bill of exchange to dispense with all the ordinary tribunals, and by the aid of a new jurisdiction to obtain an undue, and in most cases a fraudulent, preference over all other creditors whatsoever.

Should this Bill, or anything approaching it, become law, not the slightest provision will have been made for the possibility of the acceptor of any bill of exchange being disappointed in the receipt of his profits from lands, houses, or business. The acceptance will operate as a judgment, and all other creditors must allow the property of the debtor to be swept away by the holder of the bill of exchange. The Bill is rather freely denounced in certain quarters as "a job," and certainly there is nothing in the appointments following upon the creation of patronage under new Acts from the same source to negative such a supposition. However this may be, we cannot but agree with Sir Frederic Thesiger, that while we have a law in England by which in eight days judgment may be obtained on a bill of exchange, it is scarcely necessary to import the law of Scotland, and make a new tribunal, for the purpose of giving the holder of such bill the advantage of oppressing his debtor to his inevitable destruction, and de-

frauding all other creditors of their dividend of his estate, or, what may much more reasonably be expected from distressed persons, enabling such holder to collude with a particular debtor, and sweep away all his goods to the defeat and loss of all other claimants.

"With the details of the Bill it is to be hoped that the Committee will render it unnecessary to deal. At the present moment all persons granting bills of sale and mortgage have their names distributed over all parts of the country by means of registration, and so-called "societies for the protection of trade;" yet, after all this publicity adopted so as to give additional value to the securities referred to, a bill of exchange given by the same debtor conditioned for payment at a shorter date, may enable the holder to prevent all remedy, either to the mortgagee or vendee, or any other having claim on the estate.

"We have adverted to this proposed Act because its real effect may be very easily mistaken, and the consequences to all who may receive bills as a security, or give them as a convenience in however certain a hope of meeting the responsibility, are of so serious a nature as to demand strict attention to this last of the recent wanton attempts at legislation."—From "*The Press*" of the 7th April, 1855.

## NEWCASTLE-ON-TYNE LAW SOCIETY.

### BILLS OF EXCHANGE BILLS.

A PETITION to the House of Commons from the Members of the Newcastle-upon-Tyne and Gateshead Law Society, being Attorneys-at-Law and Solicitors practising in Newcastle-upon-Tyne and Gateshead sets forth:—

That a Bill is now before your Honourable House entitled "Summary Execution on Bills of Exchange Act, 1855," and that by such Bill it is necessary in order to a proceeding under its provisions,—

- 1st. To employ a notary to present and protest a dishonoured bill.
- 2nd. To register the protest at an office to be newly constituted, and
- 3rd. To obtain an order of the Court of Common Pleas for payment—after and upon which judgment may be obtained.

The petitioners beg leave most respectfully to submit, that these three new steps or modes of procedure do not in fact present any real or practical advantage over the present improved mode of proceeding by writ of summons, while the requiring a notarial protest as the foundation of proceedings on a bill of exchange, will have the effect of transferring a considerable amount of business which properly appertains to the petitioner's branch of the Profession to the office of notaries, to the serious prejudice and detriment of Attorneys. And the petitioners submit that the proposed change, if carried into effect, will not be attended with

any commensurate advantage to the public at large.

The petitioners respectfully venture to urge, that the professional emoluments of Attorneys and Solicitors have suffered material curtailment and diminution from the course of legislation during several years past, and far from being the opponents of measures of public interest and utility, the petitioners and the branch of the Profession to which they have the honour to belong, have cheerfully acquiesced in, and done their utmost to promote the same. The petitioners humbly and respectfully submit, that from their professional status and practical experience, they are equally competent and eligible to present note and protest bills of exchange with the worshipful faculty of notaries. And that to confer upon or retain to the notaries the exclusive power to note and protest bills of exchange, under the extended principle and exigency which the Bill now before the House would, if passed into a law, call into existence, would be, in fact, to interpose a professional medium between the petitioners and their clients, and therefore tend not only to the detriment of the petitioners but to create new and complicated relations. The petitioners therefore submit, that should the principle of the above measure be affirmed by the House, the protest or formal presentment of a bill of exchange by an Attorney or Solicitor, may have equal efficacy with that of a notary public.

The petitioners, therefore, humbly pray, that in case the above Bill should pass into a law, the clause requiring a protest may be altered, so as to admit Attorneys and Solicitors to present notes and protest bills for the purposes of the proposed Act, equally and concurrently with notaries public.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

### PETITION AGAINST THE BILLS OF EXCHANGE BILL.

THIS petition states, that the objects of the Metropolitan and Provincial Law Association are to promote the interests of suitors by the better and more economical administration of the law, and to maintain the rights and increase the usefulness of the Profession.

That the petitioners have carefully considered the provisions of a Bill now before the House of Commons, intitled "An Act to permit the Registration of Dishonoured Bills of Exchange and Promissory Notes in England, and to allow Execution thereon."

That, by the second and fifth sections of the Bill, it is provided that all bills and notes to be proceeded upon under its provisions must be protested and registered, and an order obtained against the parties to the bill or note, before judgment can be obtained.

That these proceedings are entirely new, and are in effect to be substituted for the present

far more simple and less expensive process of the writ of summons, and will create a serious addition to the proceedings now required before obtaining final judgment in an action on a dishonoured bill or note.

That the holder of a dishonoured bill or note may at present issue a writ and obtain judgment, and issue execution thereon without the necessity of a protest or registration, the expense of which will be a burden quite unnecessarily thrown upon the plaintiff before obtaining execution.

That it is assumed by the bill that a notary's protest is evidence of the holder being entitled to recover in an action against the drawer and indorsers of a bill, and upon this assumption special rights are conferred upon the holder of a protested bill.

That the notary must necessarily be unacquainted with the handwriting of the parties to the bill, and he presents the bill when payable, at a London bankers at the banking-house after banking hours. That such presentment, at a time when it could not possibly be paid, in no way binds the drawer and indorsers. That the notary has no knowledge whether due notice of the dishonour of the bill by the acceptor is given to the other parties to the bill, and that, therefore, the protest affords no evidence of their liability, and is consequently entirely useless.

That there are only about 130 towns in England and Wales in which notaries reside, and that in towns where there are no resident notaries the Act can only be carried into effect by means of correspondence, and the employment of agents, which must necessarily entail considerably increased expense.

That the protest and registration being superadded to the costs at the commencement of the proceedings, the expense both in undefended and defended actions will be greatly increased.

That the proposed new mode of procedure offers no advantage whatever over the present proceeding by writ of summons, but will, on the contrary, if adopted, only tend to render proceedings upon dishonoured bills and notes far more complicated and expensive.

The petitioners, therefore, pray the House not to sanction the passing of the Bill into law.

### PETITION IN FAVOUR OF THE BILLS OF EXCHANGE AND PROMISSORY NOTES BILL.

THIS petition states, that the provisions of the Bill now before the House, intitled "The Bills of Exchange and Promissory Notes Bill," are well calculated to prevent the frivolous and fictitious defences which delay the plaintiff and increase his expenses in actions upon dishonoured bills and notes, and to obtain the same results as are proposed by the Bills of Exchange Bill, also now before the House, by a much shorter, and consequently less expensive proceeding.

That the proposed alteration in the form of the common law writ in actions upon bills and notes will entail no additional expense upon the plaintiff, and will prevent frivolous and vexatious defences, by requiring the defendant to obtain the leave of a Judge before appearing and defending an action.

That the mode of proceeding proposed by the said Bills of Exchange and Promissory Notes Bill is easy and simple, and, being in accordance with the improved practice under the New Common Law Procedure Acts, can be carried into effect with the greatest facility.

That the provisions of the said Bill apply with equal advantage to all parts of the country, without requiring the appointment of any new officer, or adding anything whatever to the costs of the plaintiff, and only prevents a defence to the action on a dishonoured bill or note when the defendant is unable to make out a *prima facie* case.

The petitioners, therefore, pray the House to pass the Bills of Exchange and Promissory Notes Bill.

### LAW OF ATTORNEYS AND SOLICITORS.

#### TAXATION AFTER PAYMENT OF MORTGAGEE'S SOLICITOR'S BILL. — PROCURATION MONEY.

THE mortgagee's solicitor delivered his bill of costs, amounting to 156*l.* 15*s.* 10*d.*, to the solicitor of the mortgagor, on May 6th, 1853, and although objections were made to some of the items the matter was settled, and the amount of the bill retained out of the mortgage money, 8,000*l.* It appeared that complaints were afterwards made and the mortgagor's solicitor proposed a reduction of 30*l.*, or a reference to arbitration, which was refused, but an abatement of 15*l.* was offered.

On April 5th, a petition was presented for a taxation of the bill, on the ground of overcharge, specifying items, some as not chargeable, and others as exorbitant and excessive, and in particular an item of 20*l.* for procuration money.

The *Master of the Rolls* said: "In this case I have had a great deal of hesitation and doubt, and I thought that some of these items might, of themselves, be sufficient to open the bill. On closer consideration, though one is very strong, yet, considering the length of time since the settlement, I cannot order a taxation. In all these cases of mortgagor and mortgagee, there is some degree of pressure. I shall dismiss the petition without costs." *In re Bailey*, 18 Beav. 415.

### LAW OF COSTS.

#### OF DEFENDING ACTION AT LAW, ON RELIEF OBTAINED IN EQUITY.

THE surety to an agreement between bankers and a customer guaranteeing the balance due from the latter, pleaded to an action on the guarantee which was brought on the customer's becoming bankrupt, and then filed a bill for an injunction.

Turner, L. J., said, "The plaintiff in equity, it appears, thought, in the first instance, that he had a good defence at law, and pleaded several pleas in an action brought by the bank upon the original guarantee to recover the 1,000*l.* He allowed the action to go on until the record was completed, and then, and not till then, he filed this bill for relief against the guarantee. I concur in Mr. Malins' argument, that where a party defends an action at law, and afterwards resorts with success to a Court of Equity, it is the habit of the Court not to saddle his opponent with the costs both at law and in equity, but only with the costs of one proceeding. The plaintiff was entitled to have the question fairly tried, and to have the costs of one trial of it, but of one only. The effect of his proceedings in this case has been, that he has put the defendants to the expense of a double litigation. The defendants have failed in equity, and the Court was therefore right in making the costs in equity against them. But it was the duty of the plaintiff to have elected at an earlier stage of the action at law to what proceedings he would resort. He should not have pleaded, and put the defendants in equity to a further expense at law. My opinion is, that the right mode of dealing with the costs at law will be to direct that the plaintiff in equity should pay the costs at law subsequent to the declaration; and, with respect to the costs of the appeal, I think that the plaintiff in equity should have the deposit only."—*Watson v. Allcock*, 4 De G. M. & G. 242.

#### PRACTICE AS TO ACKNOWLEDGMENTS OF MARRIED WOMEN.

##### BLANK IN COMMISSION FOR HUSBAND'S CHRISTIAN NAME.

THE Court allowed a Commission to take the acknowledgment of a married woman in Australia, under the 3 & 4 Wm. 4, c. 74, s. 83, to go out with a blank for the christian name of the husband, which was unknown here, the

marriage having taken place in Australia. *In re Legge*, 15 Com. B. 364.

#### DISPENSING WITH NOTARIAL CERTIFICATE.

The notarial certificate of an acknowledgment by a married woman, taken at Corfu before the chief magistrate, was dispensed with, upon its being sworn that there was no English notary resident in the island, and that the chief magistrate was a person duly authorised to take affidavits there. The affidavit was directed to be attached to and filed with the proceedings. *In re Hurst*, 15 Com. B. 410.

#### IDENTITY OF COMMISSIONER, WRONGLY ADDRESSED.

The Commission to take the acknowledgment of a married woman in New South Wales was addressed to John Bingle the younger, but he signed it *John R. Bingle*. There was, however, an affidavit identifying the signature and person of John Rayden Bingle as those of the party described in the certificate as John Bingle the younger: Held sufficient. *In re Bingle*, 15 Com. B. 449.

#### FILING AFFIDAVIT NOTWITHSTANDING ERASURE.

The Court allowed a certificate of acknowledgment and affidavit of verification taken in New South Wales to be received and filed notwithstanding an erasure in a material part of the affidavit, there being satisfactory evidence (by affidavit) that the erasure was made before the acknowledgment and affidavit were taken and sworn. *In re Bingle*, 15 Com. B. 449.

### POINTS IN COMMON LAW PRACTICE.

#### INJUNCTION TO RESTRAIN INFRINGEMENT OF PATENT.

THE rule for a writ of injunction,—as to restrain the defendant from infringing a patent,—under the 17 & 18 Vict. c. 125, s. 82, is a rule to show cause only in the first instance.

*Seem* per *Jervis*, C.J., the relief may be more conveniently done under the Patent Law Amendment Act, 15 & 16 Vict. c. 83, s. 42. *Gittings v. Smith*, 15 Com. B. 362.

#### AFFIDAVIT OF SERVICE OF WRIT OF EJECTMENT.

*Quere*, whether the affidavit of the service of a writ of ejectment, under the 15 & 16 Vict. c. 76, s. 170, required by rule 112 of Hilary Term, 1853, should show, in accordance with the old

practice, that the nature and object of the service were explained to the party served? At all events an irregularity in that respect is waived by a subsequent attornment. *Edwards v. Griffith*, 15 Com. B. 397.

#### AFFIDAVIT ON MOTION TO SET ASIDE OUTLAWRY.

*Held*, that the affidavit upon which a rule is obtained to set aside proceedings to outlawry, must show that the party making it is duly authorised as the attorney of the defendant. See *Plunkett v. Buchanan*, 3 B. & C. 736; 5 D. & R. 625; *Houlditch v. Swinfen*, 2 N. C. 712; 3 Scott, 169; 5 Dowl. P. C. 36. *Skinner v. Carter*, 15 Com. B. 472.

### EXPIRING LAWS.

#### EXTRACTS FROM THE REPORT OF THE COMMITTEE.

*Assessed Taxes* (Great Britain)—59 Geo. 3, c. 51; passed 2nd July, 1819; amended 1 Geo. 4, c. 73; continued and amended 8 & 9 Vict. c. 36, and 13 & 14 Vict. c. 96; passed 14th August, 1850. To relieve Persons compounding for their Assessed Taxes from an Annual Assessment. See 16 & 17 Vict. c. 90, and 17 & 18 Vict. c. 1. Expires 5th April, 1856.

*Ecclesiastical Jurisdiction*—10 & 11 Vict. c. 98; passed 22nd July, 1847. To amend the Law as to Ecclesiastical Jurisdiction in England; continued 17 & 18 Vict. c. 65; passed 31st July, 1854, as to certain provisions. Expires 1st August, 1855, and end of then next Session.

*Poor Law*—10 & 11 Vict. c. 109; passed 23rd July, 1847. For the Administration of the Laws for Relief of the Poor in England; continued 17 & 18 Vict. c. 41; passed 24th July, 1854. As to appointment of Commissioners, &c. Expires 23rd July, 1859, and end of then next Session.

*Incumbered Estates* (Ireland), 12 & 13 Vict. c. 77; passed 28th July, 1849. Further to facilitate the Sale and Transfer of Incumbered Estates in Ireland. Amended and continued 16 & 17 Vict. c. 64; passed 15th August, 1853; as to applications for sales, expires 28th July, 1855; as to appointment of Commissioners, &c., expires 15th August, 1857, and end of then next Session.

*Pleadings, Alterations in*, 13 & 14 Vict. c. 16; passed 31st May, 1850. To enable the Judges of the Courts of Common Law at Westminster to alter the Forms of Pleading. Expires 31st May, 1855.

*Friendly Societies and Industrial Societies*, 13 & 14 Vict. c. 115; passed 15th August, 1850. To consolidate and amend the Laws relating to Friendly Societies; continued and

amended 15 & 16 Vict. c. 65; passed 30th June, 1852; extended to other Societies, 15 & 16 Vict. c. 31; passed 30th June, 1852; amended 17 & 18 Vict. c. 25; continued 17 & 18 Vict. c. 101; passed 10th August, 1854; see 17 & 18 Vict. c. 56. To legalise the formation of Industrial and Provident Societies. Expires 1st October, 1855, and end of then next Session.

*Copyhold, Inclosure, and Tithe Commissions*, 14 & 15 Vict. c. 53; passed 1st August, 1851; continued 16 & 17 Vict. c. 124; passed 20th August, 1853. To consolidate and continue the Copyhold and Inclosure Commissions, and to provide for the completion of Proceedings under the Tithe Commutation Acts. Temporary as to appointment of Commissioners, &c. Expires 1st August, 1854, and end of then next Session.

*Episcopal and Capitular Estates' Management*, 14 & 15 Vict. c. 104; passed 8th August, 1851; continued and amended 17 & 18 Vict. c. 116; passed 11th August, 1854. To facilitate the Management and Improvement of Episcopal and Capitular Estates in England. Expires 12th August, 1856.

*Insurances on Lives (Abatement of Income Tax)*, 16 & 17 Vict. c. 91; passed 20th August, 1853; continued 17 & 18 Vict. c. 40; passed 24th July, 1854. To extend for a limited time the Provision for Abatement of Income Tax in respect of Insurances on Lives. Expires 5th July, 1855.

*Indemnity of Officers, &c.*, 17 & 18 Vict. c. 39; passed 24th July, 1854. To indemnify such Persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the time limited for those purposes respectively until 25th March, 1855, and end of then next Session.

*Turnpike Acts (Great Britain)*, 17 & 18 Vict. c. 58; passed 31st July, 1854. To continue certain Turnpike Acts in Great Britain. As to certain Acts, expires 1st October, 1855, and end of then next Session; as to certain Acts, expires 1st November, 1855.

*Bribery, &c.*, 17 & 18 Vict. c. 102; passed 10th August, 1854. To consolidate and amend the Laws relating to Bribery, Treating, and undue Influence at Elections of Members of Parliament. Expires 10th August, 1855, and end of then next Session.

*Incumbered Estates (West Indies)*, 17 & 18 Vict. c. 117; passed 11th August, 1854. To facilitate the Sale and Transfer of Incumbered Estates in the West Indies. Temporary as to appointments of Commissioners, &c. Expires six years from date at which the Act takes effect and until the next Session.

*Note*.—The Act takes effect upon the issuing of an Order in Council. No Order in Council has yet been issued.

## EARLY CLOSING ON SATURDAYS.

*To the Editor of the Legal Observer.*

SIR,—May I request the favour of your insertion of the following remarks and suggestions on the above subject:—It is now more than half a century ago since Dr. Franklin addressed a Mr. Vaughan, then M.P. for Calne, North Wilts (*vide Gentleman's Magazine*), as follows:—"If man had his natural rights, he ought not to work more than six hours a day." Since that period the powers of machinery and production have increased to an incalculable extent; gas, steam, and railways have done a great deal, but have yet more to do; machinery has, to a considerable extent, superseded manual labour; but what has been done for man in his social and progressive character, and advancement in the scale of being? It is true that we have reared a Crystal Palace, Panopticon, baths and wash-houses, model lodging-houses, mechanics' institutions, Young Men's Christian Societies, and reading-rooms throughout the land, but how few of the industrial classes can avail themselves of their advantages. For instance, myself, as a hard worker in the hive of industry, have only just been able to spare two or three hours to witness the wonders of the Crystal Palace, and there cannot be the least doubt, although the establishment has been open for nearly twelve months, that there are thousands and tens of thousands, if not millions, who have not yet been able to see it, and probably never will be, unless a *half-holiday on Saturdays* is extended to them by their employers.

What are we doing in London for our artisans, the clerks in our counting-houses and public offices, and other of our fellow men, engaged in laborious and sedentary occupations? Are we really in earnest in our endeavours to lessen the hours of severe toil to the sons of labour and of intellect? I was forcibly struck in a tour through the provinces, particularly at Liverpool, on finding the Exchange, solicitors' offices, and large mercantile establishments *wholly*, not partially, closed at two o'clock P.M. on Saturdays—and that the clerks, as well as principals, could not be seen in business after that hour. I found that this rule was observed at Manchester, Leeds, and various other places in the North of England.

There was a very applicable memorial addressed to the Council of the Incorporated Law Society, and signed by 234 of the leading firms of Attorneys and Solicitors of the Metropolis. It stated that for many years past the members of the Legal Profession had felt that the time recognised as the business hours of the Profession amounted almost to an exclusion of every other pursuit whether of a literary, social, or domestic character; that a limited relaxation from business had been for some time past observed in Scotland, by making two o'clock P.M. on Saturdays, the close of the day for transacting legal business, the advantage of which was fully admitted; that there was a

growing disposition to be observed from day to day, on the part of the mercantile and trading community of London, to cease from business at mid-day on Saturdays, with a view to consult, in a special point of view, the health and position of the clerks and assistants in their employ, and suggestive that the Lord Chancellor and Judges of the realm might be pleased to appoint two o'clock on Saturdays to be the close for that day for conducting legal business in *all its branches*.

Every public improvement must have a commencement. I would therefore venture to suggest, that her Majesty's Government Offices should take the lead in this important movement; for instance, *as there is now but little business doing on Saturday afternoons* at the Inland Revenue, the Receiver-General might close his office at one o'clock P.M., and the whole of the Inland Revenue Department at two o'clock P.M., on that day. Indeed there is even a precedent for this, and which the Lords of her Majesty's Treasury may require, for the *Audit Office, a branch of the same service*, has been closed at two o'clock P.M., on Saturdays for a *considerable period*, and which has proved of no disadvantage to the public service. This has enabled the clerks to breathe the fresh air of the country, and to indulge for nearly two days in healthful relaxation, combined with the exercise and observance of their several religious and social duties. If the heads of Governmental departments and other public boards, would severally adopt the above suggestion, they would find, that the clerks in their employ would return to business on the following Monday morning with renewed and increased energies, and that even the public at large would be thus gainers by the boon.

Under the above circumstances it is to be hoped that the Lords Commissioners of her Majesty's Treasury, as their Lordships can have but one interest, that of benefiting the public, by aiding the efficiency and comfort of all clerks in the various Governmental departments, that they will be pleased to request the Honourable Commissioners of her Majesty's Inland Revenue, to carry the above suggestions into effect.

If this should be accomplished, the Court of Chancery, the Law Courts, the insurance companies, and, in fact, all the leading establishments in London and Westminster will soon follow in the train.

Her Majesty's Inland Revenue may be considered in its function of receiving the cash and keeping the account of the *suitors' fee fund*, as the Exchequer of the Court of Chancery, and it seems but reasonable that both these departments should *simultaneously close*. As Lord Cranworth has ever proved himself a friend to the bees in the hive, there can be no doubt that it would afford his Lordship much pleasure to accede to so desirable a proposition.

The Members of the Houses of Lords and Commons have their *dies non* on Saturdays, and why should not the Lord Chancellor and the Judges of the land enjoy the like advan-

tage? I really believe that the press, on behalf of the general public, would be willing to suggest even more, for those engaged in the Equity and Law Courts, than the Solicitors of the metropolis have as yet ventured to propose.

I would advise that "*the Early Closing Association*" should take the matter up at once, and convene a public meeting of the bankers, merchants, solicitors, tradesmen, clerks, and artisans of the metropolis and its environs. At such a meeting a resolution or resolutions in favour of the measure should be adopted, whereon to found, in the discretion of the meeting, a memorial either to Her Most Gracious Majesty the Queen, the Houses of Lords and Commons, or simply to resolve that the resolution or resolutions to be adopted should be forwarded by the Chairman or Secretary of the meeting, with a suggestive letter of recommendation, to the Right Honourable the Lords Commissioners of her Majesty's Treasury,—as their Lordships, so far as the Inland Revenue is concerned, appear to have the power of ceding the long-desired boon.

In conclusion, I would observe that every Christian man, who is anxious to promote the religious, social, moral, intellectual, and physical well-being of his brother man will join with alacrity in this movement, and I am sure that it will not only have your powerful support, but also that of the entire intelligent press of this Country. I have the honour to be, Sir, your most obedient servant,

JOHN ROBERT TAYLOR.

54, Chancery Lane,  
10th April, 1855.

[A memorial has been presented to the Council of the Incorporated Law Society from many hundred London law clerks in support of this measure, and we heartily wish them success.—Ed. L. O.]

## COUNTY COURT JUDGES.

NAMES OF JUDGES AND DATES OF CALL,  
WITH THEIR FORMER APPOINTMENTS.

[Concluded from page 242, ante.]

Circuit 27. Shropshire.—*Uvedale Corbet*, Esq., Hilary Term, 1815; High Steward of the Court of Record for the Hundred of Bradford, in the County of Salop, and Recorder of the Boroughs of Bridgenorth and Wenlock.

Circuit 28. Anglesey, Carnarvonshire, Cardiganshire, Denbighshire, Merionethshire, Montgomeryshire.—*Arthur James Jones*, Esq., Hilary Term, 1835.

Circuit 29. Denbighshire, Flintshire, Montgomeryshire, Shropshire.—*E. L. Richards*, Esq., 26th January, 1837.

Circuit 30. Brecknockshire, Glamorgan-shire, Radnorshire.—*Thomas Falcouer*, Esq., 8th February, 1830; Revising Barrister in the Boroughs of the Tower Hamlets, Finsbury, and Marylebone.

Circuit 31. Carmarthenshire, Cardiganshire,



Pembrokeshire.—*John Jones*, Esq., Michaelmas Term, 1831.

Circuit 32. Norfolk.—*Thomas Jacob Birch*, Esq., November, 1831; Recorder of Thetford borough.

Circuit 33. Norfolk, Suffolk.—*Francis King Eagle*, Esq., 24th November, 1809; sat for the Duke of Grafton, Recorder of Thetford.

Circuit 34. Cambridgeshire, Lincolnshire, Norfolk, Northamptonshire.—*John Dick Barnaby*, Esq., Michaelmas Term, 1828; Judge of Local Courts at Loughborough, Oakham, Uppingham.

Circuit 35. Bedfordshire, Cambridgeshire, Essex, Hertfordshire, Huntingdonshire, Northamptonshire, Suffolk.—*John Collyer*, Esq., Hilary Term, 1827.

Circuit 36. Bedfordshire, Buckinghamshire, Northamptonshire, Oxfordshire.—*John Wm. Wing*, Esq., 19th November, 1838.

Circuit 37. Berkshire, Oxfordshire.—*John Billingsley Parry*, Esq., Q.C., November, 1824.

Circuit 38. Bedfordshire, Buckinghamshire, Essex, Hertfordshire, Middlesex.—*John Herbert Koe*, Esq., Q.C., 22nd November, 1810.

Circuit 39. Essex, Suffolk.—*William Gurdon*, Esq., Trinity Term, 1829; Recorder of Bury.

Circuit 40. Whitechapel, Middlesex.—*James Manning*, Esq., Q.A.S., 23rd of June, 1817.

Circuit 41. Shoreditch and Bow, Middlesex.—*Henry Storks*, Esq., S.L., 26th November, 1803.

Circuit 42. Clerkenwell, Middlesex.—*Herbert George Jones*, Esq., S.L., 14th May, 1828.

Circuit 43. Bloomsbury, Middlesex.—*D. D. Heath*, Esq., 30th January, 1835; County Clerk of Middlesex.

Circuit 44. Brentford, &c., Middlesex.—*John Leycester Adolphus*, Esq., 21st of June, 1822.

Circuit 45. Westminster, Middlesex.—*Francis Bayley*, Esq., 15th June, 1827.

Circuit 46. Surrey.—*John Farquhar Fraser*, Esq., May, 1817.

Circuit 47. Surrey.—*George Clive*, Esq., Easter Term, 1830.

Circuit 48. Kent, Surrey.—*John Pitt Teylor*, Esq., 9th June, 1837.

Circuit 49. Kent.—*James Espinasse*, Esq., 27th of June, 1827; Judge of the Rochester Court of Requests.

Circuit 50. Kent.—*Charles Harwood*, Esq., 20th June, 1828; Recorder of Shrewsbury.

Circuit 51. Sussex.—*William Furner*, Esq., 7th May, 1851; Judge of the Court of Brighton and New Shoreham, and Places adjacent thereto.

Circuit 52. Hampshire.—*C. J. Gale*, Esq., Trinity Term, 1832; Judge of Courts at Ashby-de-la-Zouch, Belper, and King's Norton.

Circuit 53. Somersetshire and Wiltshire.—*Joseph Grace Smith*, Esq., 25th November, 1814; Recorder of Hereford Borough Quarter Sessions and Mayor's Court of Hereford, and Assessor of the Bath Court of Requests.

Circuit 54. Gloucestershire, Wiltshire.—*James Francillon*, Esq., 20th November, 1833.

Circuit 55. Gloucestershire.—*Arthur Palmer*, Esq., Easter Term, 1821; Assessor of the Court of Requests of Bristol, &c.

Circuit 56. Dorsetshire, Hampshire, Wiltshire.—*Edward Everett*, Esq., 28th May, 1824; Judge of the Court for New Sarum and other places in the Counties of Wilts, Hants, and Dorset.

Circuit 57. Somersetshire.—*Graham Willmore*, Esq., Q.C., Michaelmas Term, 1829.

Circuit 58. Devonshire.—*John Tyrrell*, Esq., Michaelmas Term, 1813; Judge of the Court of Requests in Exeter and in Totnes.

Circuit 59. Cornwall, Devonshire.—*William Mackworth Prad*, Esq., May, 1822; Recorder of the Boroughs of Barnstaple and Bideford, Judge of Local Court at Newton Abbott.

Circuit 60. Cornwall.—*George Grassville Kekewick*, Esq., 23rd November, 1827; Judge of Crediton Small Debts Court; Deputy Judge of Provost Court of Exeter.

## INCREASE OF THE SALARIES OF COUNTY COURT JUDGES.

*To the Editor of the Legal Observer.*

SIR,—Your *Observers* of the 17th and 24th ult. contain extracts from a correspondence which you very justly characterise as "remarkable." It should seem the learned Judges of our County Courts having become of late dissatisfied with their allowances, the Rhadamanthus of Clerkenwell, stepped forth to "ask for more." The appeals have been not a little pathetic and partially successful;—15 Judges now receive augmented salaries, the extra slices of "solid pudding" being distributed, to compensate the deficiency of "empty praise." We are told, indeed, that Lord Chief Justice Denman once called these County Courts "tribunals of general resort, in whose favour the voice of the nation had unequivocally proclaimed a preference by the transfer to them of the greater part of the business of Westminster Hall." Sure, sir, that nobleman had not the gift of prophecy, or if he rightly characterised them in his own day, in ours, their SIXTY presidents may exclaim, "*Indubitablement, nous avons changé toute cela!*"

Eight years have scarce glided away since County Courts were instituted, and yet how many of their Judges have been cashiered; no term elapses but Westminster Hall resounds with loud complaints of their mismanagement and inefficiency. One learned baron publicly denounces them as "causing far more mischief than they rectify." Lord Campbell, listening to their *modus operandi*, vows "it is quite shocking to find such things occur before a regular tribunal;" while, as we all know, a commission of inquiry into their abuses, is even now in progress,—that commission wrung from a reluctant Government by the outcries of a disappointed people. And this, forsooth, is the convenient season to claim vehemently an increase of income! No doubt,—but none

*aut nunquam*, is the watchword, it would never do to tarry till the report is published.

I quite admit, that on the *detur digniori* principle, no Judge has fairer claims to increased salary than Serjeant Jones; but what must be the condition of the weaker brethren if he, the champion of the order grumbles, because whenever "a County Court Judge is prevented from sitting by illness or other unavoidable cause," that County Court Judge is compelled, *le pauvre homme!* to "appoint a deputy," with the superadded hardship, that, "in the metropolitan Courts," the "deputy must be able and efficient!"

But some, perhaps uncharitably, suppose, that though maladministration and neglect are rampant, the small and less frequented County Courts are those in which attendance is least regular. Not so, but contrariwise;—the returns have shown, that "the number of the days in which the Judge is required by the Act to sit, considerably exceeds the number in which the Judges of most of the circuits in which the fees are large do sit;" or, in other words, that, the Judges of the wealthiest and most important circuits are those most noted for systematic disregard of duty.

Under the circumstances above detailed, Mr. Serjeant Jones, in October, 1854, applied to Viscount Palmerston for these augmentations of judicial income. Lord Palmerston transmitted the memorial to the Treasury, with the sage remark, that "no man ought to be made a Judge of a County Court who does not possess a considerable amount of general information and legal knowledge, and belong to a sufficiently respectable class of society." These requisitions, vague perhaps but surely moderate, the noble lord accompanied by a suggestion, that if any were, all of the sixty Judges ought to be, how shall I, sir, express it?—crowned with increase. Just a fortnight later, the Commissioners of the Treasury gave judgment. They "thought that the importance of particular Courts should be considered mainly, if not exclusively, in relation to the extent and character of the judicial duties attached to them, as the best indications of the legal and mental qualifications required for them, and not by the physical labour beyond the performance of the judicial duties attending them, which cannot in any case be considered as extreme."

We may from hence infer, that, as is now and then the case in common life, some little difference of opinion had sprung up betwixt the prayers and the recipients of these salaries. The criterion being, the extent and character of the service rendered, let us devote a few minutes to its investigation.

First, as to the *extent*—and here it really does appear that the serjeant musters an extraordinary array of figures; apprising us that in 1851, that the number of complaints was 441,584; the aggregate of debt and damage sued for, 1,624,916*l.*; and,—the sums recovered being 618,468*l.*—the Court-fees were just 272,500*l.*—units, tens, hundreds, thousands, tens of

thousands, hundreds of thousands, millions. Alas! analysis destroys the whole illusion, and gives the average of debt or damage sued for, 3*l.* 13*s.* 7*d.*—and the average sum recovered, 1*l.* 8*s.*;—while the average of Court-fees exacted came to 12*s.* 4*d.*, and left a final balance of 15*s.* 8*d.* to be pocketed by each successful litigant; from which modicum, however, he must deduct his principal and interest, and then (if he employs no advocate) repay himself and witnesses for their time and travelling expenses.

Next comes the *character* of these judicial duties, and recollecting that the average amount contended for is only 3*l.* 13*s.* 7*d.*, one, *à priori*, would not be inclined to think deep learning, or vast intellect, indispensable to the presiding magistrate. The affectionate biographer of Judge Story tells us, that when his father took his seat upon the bench, "the docket was almost appalling." Thus Cæsar's ghost at first dismayed the noble Brutus, but when the patriot

"Had taken heart—it vanished."

The Quarterly Reviewer's comment upon the passage is suggestive:—"We do not forget that large numbers of cases are mentioned as crowding what is called 'the docket of the Court;' but these numbers are deceptive; of these causes a vast proportion must be of the kind which melt away when when you touch them."<sup>1</sup> They "must be,"—yes, the criticism of the literateur is backed by facts and figures undeniable. In January, 1850, a speaker at a public meeting, vaunting that the cases "disposed of" in a certain manufacturing town had been in 1848 no less than 2,878, was called to order by an officer of the Court, who added, "that of that number, considerably more than half were heard."<sup>2</sup> We will, however, take one moiety, and calculating that the learned Judge of County Court No. 25 (one of those wealthier circuits upon which they do not sit regularly) had, during 1848 at all events, held his sessions monthly, as the Act enjoins, and sat on each occasion full ten hours without one single instant's interruption: then having so done, if we evoke old "Cocker," and inquire the average time allotted to each case, including plaintiff and defendant, or their respective advocates, and witnesses? The veteran's answer would be,—"*Five minutes and the fraction of a second.*"

<sup>1</sup> *Quarterly Review*, 1852, p. 33.

<sup>2</sup> *Wolverhampton Chronicle*, 16th January, 1850. During the next two years, the averages were much diminished, and the *Wolverhampton Municipal Guardian* thus records, on the 28th of February, 1852, the results of its investigations:—"We are informed that the average number of causes set down for hearing at each Court rather exceeds than comes short of 200; if we grant that of these one-fourth are settled without the intervention of the Court, there remain 150 to be disposed of. A sitting of ten hours' duration would give to each of these *just four minutes.*"

It may be replied that, now and then, cases argued in our County Courts, if they do not require, at all events consume much time, and that occasionally "the sixty," like their Roman predecessors, "wear out a good wholesome forenoon in hearing a cause between an orange wife and a fomet-seller, and then adjourn a controversy of threepence to a second day of audience." No doubt,—yet each adjournment must abbreviate the general average.

"I hope here be truths," as the Viennese advocate, Pompeius, told Mr. Justice Escalus. If so, the Treasury assume correctly, that "the judicial duties of our County Court Judges cannot in any case be considered as extreme," while their exists no rational grounds for apprehension "that the proposed salaries would not be sufficient to command a suitable body of Judges."

Jesting apart, the inferences deducible from these estimates must be:—

That the fees exacted in our County Courts are quite exorbitant, since the expense of getting judgment on a plaint for 20*l.* in an undefended action more than doubles that which, in the like case at Westminster, would defray the costs of a judgment entered for 20,000*l.*

That, for disputes involving a very small amount of debt or damage, a County Court, providing its fees were moderate, and its Judge impartial, prompt, and well-informed, would be an unexceptionable tribunal.

Lastly, that of our sixty Judges the great majority are irreproachable, though there exist, unhappily, some very sad exceptions.

The public now, sir, have begun to feel the truth of Henry Brougham's warning in 1828:—"Cheap justice is a very good thing, but costly justice is better than cheap injustice." As for the Bar—once trained both morally and intellectually for a career which to professional distinction superadded public and senatorial honours—they must now succumb to dull provincial mediocrities, and see themselves excluded from their proper sphere, their rank usurped and their emoluments monopolised,—by whom? why, generally speaking, by, as Lord Lyndhurst prophesied would be the case,—"the lowest retainers of the law." For the last thirty years, the tendency of the English Bar has been in general estimation—downwards, nor is, perhaps, the dismal day far distant when lofty rectitude, bright eloquence, and varied learning, must falter out the soul-demoralising petition,—"Put me, I pray thee, into one of the County Court offices, that I may eat a piece of bread." LEGALIS.

Temple, 13th April, 1855.

<sup>3</sup> Coriolanus, Act 2, Sc. 1.

<sup>4</sup> Measure for Measure, Act 2, Sc. 1.

<sup>5</sup> In a letter which appeared in the *Morning Chronicle* of the 3rd instant, we find that in one of our Metropolitan County Courts, the fees exacted for the recovery of 12*l.* 14*s.* were 7*l.* 13*s.* 4*d.*

## SELECTIONS FROM CORRESPONDENCE.

### ATTORNEYS' PRIVILEGE IN COUNTY COURTS.

SIR,—In your journal of the 17th inst., p. 374, you "notice," and give extracts from Sir George Stephens' "Digest of County Court Cases." Under the title of "Attorney Privilege"—the case of *Jones v. Brown*, 1 C. C. C. p. 102, Easter Term, 1848. Ex.—is cited as showing that "An attorney is still privileged to sue in a Superior Court for debts and demands within the jurisdiction of the County Courts, notwithstanding the provisions of the 67th and 129th sections of the County Courts Act; and that a rule to deprive an attorney plaintiff of costs who had sued in the Superior Courts, upon a cause of action within the jurisdiction of the County Courts, will be discharged with costs."

It is true you give the date of this case (1848), but from the manner in which these extracts are inserted, it would certainly appear that they were meant to be understood as "existing law." I would submit to you that the insertion of this case is calculated to mislead your readers, for by the 12 & 13 Vict. c. 101, s. 18 (the County Courts' Amendment Act), it is expressly enacted—"That no privilege shall be allowed to any attorney, solicitor, or other person to exempt him from the provisions of this Act, or the said Act (viz. 9 & 10 Vict. c. 96) for the more easy Recovery of Small Debts and demands in England;" and, consequently, the privilege of attorneys is thereby taken away. A. C.

## NOTES OF THE WEEK.

### SCOTCH LUNACY COMMISSIONERS.

THE Queen has been pleased to direct Letters Patent to be passed under the Great Seal appointed by the Treaty of Union, to be kept and made use of in place of the Great Seal of Scotland, appointing

Samuel Gaskell, Esq., Fellow of the Royal College of Surgeons.

William George Campbell, Esq., Barrister-at-Law.

Alexander Earle Monteith, Esq., Advocate, Sheriff of the Shire of Fife; and

James Coxe, Esq., Doctor of Medicine; to be her Majesty's Commissioners for the purpose of inquiring into the state of the Lunatic Asylums in Scotland, and also into the present state of the Law respecting Lunatics and Lunatic Asylums in that part of the United Kingdom.—From the *London Gazette* of 10th April.

### LAW APPOINTMENTS.

The Queen has been pleased to appoint John McCormack, Esq., to be assistant Police Magistrate for the Colony of Sierra Leone.—From the *London Gazette* of March 30.

The Right Honourable Edward Pleydell

Bowyer, Barrister-at-Law, has been appointed Vice-President of the Board of Trade.

The Earl of Harrowby has been appointed Chancellor of the Duchy of Lancaster.

Mr. John Pyer has been appointed Chief Clerk, and Mr. B. F. Bowdler, Second Clerk, at the Thames Police Office.—*Observer*.

The Right Honourable Dudley the Earl of Harrowby, and the Honourable Edward Pleydell Bowyer, were by command of the Queen

sworn of her Majesty's most Honourable Privy Council, and took their places at the Board accordingly. — From the *London Gazette* of April 3.

Mr. John Ball, M. P., Barrister-at-Law, has been appointed Under-Secretary for the Colonies.

Mr. Samuel Shepherd, Barrister-at-Law (Home Circuit) has been appointed residing Magistrate at Bay Islands.—*Observer*.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Master of the Rolls.

*Spier v. Hiatt.* Feb. 20, 1855.

**FREEBENCH. — LIABILITY OF WIDOW TO HUSBAND'S DEBTS.**

*Held, that the right of a widow to freebench in her husband's copyhold property stands on the same footing as the right of dower, and is not therefore liable to the husband's debts.*

It appeared in this creditors' claim that the deceased was devisee of copyhold property but had not been admitted, and on his death intestate his widow claimed to be entitled to freebench.

*Sheffield*, for the creditors, contended she took subject to her husband's debts; *Martindale*, contra.

The Master of the Rolls said, that freebench stood on the same footing as dower, and that it was only the estate subject to such dower which was liable for the husband's debts.

*Henniker v. Chaffey.* March 2, 1855.

**REMISSION OF ARREARS OF RENT OF INFANT'S ESTATE.**

*The tenants of an estate belonging to an infant, and managed by a receiver, had suffered by the destruction of their crops by the overflowing of a river: A petition was granted to relieve them from payment of their arrears of rent, amounting to about 1,200*l*.*

*R. Palmer* and *J. W. Stephen* appeared in support of this petition, on behalf of the tenants of an estate in Norfolk, belonging to an infant, and which was managed by a receiver, to be relieved from the payment of their arrears of rent, amounting to about 1,200*l*., on the ground of the destruction of their crops from the overflowing of a river.

The Master of the Rolls said, that as the owner *in sui juris* would properly remit the rent under the circumstances, the petition would be granted.

### Vice-Chancellor Kindersley.

*Hishop v. Wickham.* Feb. 21, 1855.

**ADDING PARTY TO PETITION AFTER ORDER.**

*An application was granted by consent to amend a petition for payment of the arrears*

*of an annuity to which the petitioner was entitled, by adding her sister who was similarly entitled, although an order had been made on such petition but not passed.*

THIS was an application, by consent of all parties, for leave to amend this petition for payment of the arrears of an annuity to which the petitioner was entitled under her father's will, by adding her sister who was similarly entitled. An order had been made on the petition, but had not been passed.

*W. K. Wigram* in support.

The Vice-Chancellor granted the application.

### Vice-Chancellor Stuart.

*Morrison v. Morrison.* Feb. 24, 1855.

**STAYING PAYMENT OF MONEY OUT OF COURT PENDING APPEAL. — COSTS OF PETITION.**

*A petition on behalf of the appellant from a decree for the payment of money to the parties, to stay such payment until the appeal should be determined, was refused on the respondents' undertaking to pay interest at 4 per cent. on the amount paid out, but without costs, the case involving questions of great difficulty and there being reasonable grounds of appeal.*

THIS was a petition, on behalf of the appellant from a decree for the payment of a sum of money to the parties, to stay such payment until the appeal should be determined.

*Cracknell* in support; *Wigram* and *Wickens*, contra.

The Vice-Chancellor, upon the respondents undertaking to pay 4 per cent. interest on the amount paid out of Court if the result of the appeal should be adverse, refused the petition, but said, that as the case involved questions of great difficulty, and there were reasonable grounds of appeal, it would be dismissed without costs.

### Vice-Chancellor Studd.

*Augier v. May.* March 2, 1855.

**ORDER FOR INJUNCTION. — MISRECITAL OF SERVICE OF NOTICE OF MOTION. — FRAUD.**

*An order for an injunction recited service of the notice of motion on the defendants, whereas it appeared that leave had been*

obtained for service on their solicitors, on whose housekeeper it had in fact been served: Held, that the proper course was to move to discharge the order and not to discharge the injunction.

Leave given to amend notice of motion accordingly.

IN this motion to dissolve an injunction restraining the issue of execution on a judgment in an action at law, it appeared that the notice of motion on which the injunction was obtained, had been served on the housekeeper of the attorneys of the defendants in the action.

Fooks in support, on the ground such service was insufficient.

Rolt, contra.

The Vice-Chancellor, upon its appearing that the order recited that notice of motion was served on the defendants, whereas special leave had been obtained for service on their solicitor, said, that the proper course was to move to discharge the order, and not to discharge the injunction, but gave leave to amend the notice of motion.

**Coombs v. Baker.** March 13, 1855.

TRUSTEES.—WILFUL DEFAULT IN NOT COLLECTING RENTS.—INTEREST.—COSTS.

*Trustees under a will leased certain collieries, but neglected, although frequently urged so to do, to get in the rent and obtain an account of the workings. A bill was filed charging such wilful default: A decree was made for an account of the workings and of the interest on the moneys which the defendants, but for their default, might have received, and for the appointment of new trustees. Costs up to the hearing were refused to the trustees.*

THE defendants in this suit were appointed trustees under the will of a testator, part of whose estate consisted of certain collieries which had been let by them on lease under powers contained in the will; but they had neglected to get in the rent from the lessees and obtain an account of the workings, and this bill was filed, after repeated applications by the parties interested, charging them with wilful default.

*W. M. James and Karstake for the plaintiffs; Daniel and Osborne for the defendants.*

*Rolt and Hardy for the lessees, offered to pay the arrears of rent into Court.*

The Vice-Chancellor, having ordered such payment accordingly, said that an account must be taken of the sums earned by the lessees, and also of the interest on the moneys which the defendants, but for their wilful default, might have received. New trustees would be appointed in their stead, and they would have no costs up to the hearing.

**Stevens v. Hotham.** March 20, 1855.

SPECIFIC PERFORMANCE OF AGREEMENT BY TESTATOR TO ACCEPT RENEWED LEASE.—EXECUTORS.

*A testator agreed to accept a renewed lease and execute a counterpart of certain premises, but on his death his executors refused to comply therewith and enter into any personal covenants, although admitting assets: A specific performance of the agreement was decreed at the suit of the lessor's devisees in trust, with a reference to settle the lease, and the defendants to pay executors' costs.*

THIS was a suit by the devisees in trust of a deceased lessor, to compel the executors of the original lessee to accept a renewed lease and execute the counterpart in accordance with an agreement entered into by their testator. The defendants, although admitting the assets to be considerable, declined to enter into any personal covenants.

*Willcock and Piggott for the plaintiffs; W. M. James and Messiter for the defendants.*

*Cw. ad. vult.*

The Vice-Chancellor said, that in accordance with the decision of the Vice-Chancellor of England, in *Phillips v. Everard*, 5 Sim. 102, a reference would be made to settle a lease, and as the suit was occasioned by the defendants refusing to enter into any covenants at all, they must pay executors' costs.

**Davey v. Bennet.** March 28, 1855.

MISDESCRIPTION OF PLAINTIFF IN BILL.—ORDER TO REVIVE.—COSTS.—LEAVE TO AMEND.

*An order to revive was discharged with costs which had been obtained on an affidavit by the plaintiff of her recent marriage, where it appeared that she was married before the bill was filed, although described therein as a spinster, but with leave to amend the bill on giving security for costs.*

THIS was a motion to discharge the order to revive which had been obtained in this suit upon the marriage of the plaintiff, and for security to be given for costs. It appeared that she was described in the bill as a spinster, although at the time married, in consequence of having concealed her marriage from her solicitor, and that the order to revive had been obtained on an affidavit of her recent marriage.

*Sandys in support; W. R. Ellis contra.*

The Vice-Chancellor said, that an order would be made to discharge the order to revive with costs of this motion, but with leave to amend the bill, on security for costs being given on or before the last day of Easter Term.

## ANALYTICAL DIGEST OF CASES,

SELECTED AND CLASSIFIED.

## SCOTCH APPEALS TO HOUSE OF LORDS.

## ACCIDENTAL DEATH.

**Master and Servant.—Stranger.**—A master is bound to take all reasonable precautions to secure the safety of his workmen; more especially if the work be of a dangerous character and the persons engaged proverbially reckless.

By the law of England, when the accidental death of a servant is occasioned by the negligence of a fellow servant, the master is not generally held responsible. This does not appear to be the law of Scotland—*sed quære*.

How far the rashness of the deceased is an answer to a claim of reparation on the part of his relatives, where negligence is established against the master. Whether the English and Scotch laws do not differ on this head, *quære*.

If the deceased has himself contributed to the accident, his relatives cannot in England recover.

Whether if negligence be established against the defendants, mere rashness on the part of the deceased would in Scotland be an answer to the action, *quære*.

In England, the injury sustained by the accidental death of a relative, in order to be compensated by the verdict of a jury, must be of a pecuniary character. An English jury cannot give damages for affliction.

In Scotland the jury administer a *solatium* to injured feelings. *Paterson v. Wallace*, 1 Macq. 748.

## ACT OF PARLIAMENT.

1. *Construction of old, how cleared.*—The construction of an old Act of Parliament may be cleared by *contemporanea expositio*, showing the conduct and understanding of parties at the time of its passing, and subsequently; and for this purpose the annals or histories of the period, and antiquarian researches, may be referred to. *Montrose Peerage*, 1 Macq. 401.

2. *Construction of local and private.*—In dealing with a local and private Act of Parliament, the Court will incline against any construction calculated to annihilate or disturb public rights. *Campbell v. Lang*, 1 Macq. 451.

## AFFIDAVIT.

The taking of an affidavit is a ministerial, not a judicial act.

A Scotch justice of the peace may take an affidavit out of his jurisdiction, provided the locality be within the authority of the Great Seal of Great Britain. Hence an affidavit before a justice of the peace of the county of Midlothian, was *held* valid, though taken in London. *Kerr v. Marquis of Ailsa*, 1 Macq. 736.

## AGENT.

*Principal and.—Bidding at auction.*—Doctrine of the Court of Session, that an agent

bidding at a sale by auction on behalf of an insolvent principal, whom he names, is bound to put the vendor on his guard, or to make good the purchase-money—not supported at the Bar of the House. *Dudgeon v. Thomson*, 1 Macq. 714.

## BILLS OF EXCEPTION.

*Appeal from disallowance of exceptions.*—The 45 Geo. 3, c. 151, s. 15, does not apply to cases under the Jury Statutes, for which a special rapidity of movement is secured by the 55 Geo. 3, c. 42, ss. 7, 8, 9.

When exceptions to the ruling of a Judge at a trial are disallowed, the appeal against the interlocutor of disallowance must be within the time limited by the 55 Geo. 3, c. 42, and cannot claim the benefit of the 48 Geo. 3, c. 151, s. 15. *Melrose v. Hastie*, 1 Macq. 693.

## COSTS.

*On exceptions.*—On the allowance of exceptions, costs are not awarded, because it is not the party, but the Judge, who has gone wrong. But on the disallowance of exceptions costs are awarded, because it is the party, and not the Judge, who has gone wrong. *Paterson v. Wallace*, 1 Macq. 748.

## FEU-DUTY.

*Personal bond for payment of binds, though land parted with.*—The conditions of a sale by auction stipulated that the purchase-money should consist of a certain annual feu duty, to be increased by the biddings; and for securing the regular payment thereof, a personal bond was to be granted, binding the purchaser, his heirs and successors in perpetuity, and a surety with him for 10 years. The bond bound the purchaser, "his heirs, executors, and administrators," for all time. The surety, by the same instrument, bound himself, his "heirs, executors, and successors," for 10 years.

*Held*, reversing the decision below, that neither the obligor in the bond, nor his personal representatives, could, by alienating the estate, get rid of the obligation.

The feudal doctrine that a vassal, on ceasing to be a vassal, ceases to be liable for the feu-duty issuing out of the land, — *held* inapplicable to a case where the parties chose to make special stipulations. *King's College, Aberdeen v. Lady J. Hay*, 1 Macq. 526.

## "INTENTION."

*Construction.*—In Courts of Justice, the word "intention" means such intention only as can be deduced from construction.

Where the language of an instrument, though slovenly and inaccurate, shows what is meant, the Court will make the language bend to, and execute the intention. *Dickson v. Dickson*, 1 Macq. 729.

## INTERDICT.

*Or injunction.—Acceptance of rent.—Title of possession.*—An interdict or injunction may

be summarily granted for the preservation of interests left unprotected, or subject to or threatened with irreparable damage.

But where the rights of parties are not affected or endangered, summary proceedings in the nature of interdict or injunction are inappropriate.

The acceptance of rent, particularly if repeated, gives such a title of possession, as cannot be questioned by interdict. A suit or action will be necessary. *Borrows v. Colquhoun*, 1 Macq. 691.

#### ISSUES.

1. *Framing of and directing of juries.*—Remarks by the Lord Chancellor, tending to induce a greater accuracy and strictness in the framing of issues and directing of juries in Scotland. *Young v. Cathbertson*, 1 Macq. 455.

2. *As to fact or law.*—*Appeal from interlocutor.*—In directing an issue for trial, a question of law is almost always involved. Thus, upon the issue whether A. is the son of B., the point will arise, what is a lawful marriage? Nevertheless, the endeavour should be made to confine the issue as much as practicable to pure facts, and to exclude legal questions.

As far as the nature of things permit, the English Courts constantly separate facts from law. The Scotch Courts ought to do so likewise.

An interlocutor directing a trial by jury is not appealable; but upon the question, what the issue shall be, an appeal is open. *Melrose v. Hastie*, 1 Macq. 698.

#### JURISDICTION.

1. *Appeal, where arbitration.*—Where the Court below have acted as arbitrators, there can be no review by the House of Lords.

Where the parties agree to a particular decision, there can be no appeal from it.

Where, in the exercise of its proper jurisdiction, the Court below has only one course of proceeding preparatory to its decision, and the parties agree to a decision, thereby giving the Court a power which it otherwise would not have possessed—no appeal will lie.

But where, in the exercise of its proper jurisdiction, the Court below has the option of two or more courses of proceeding preparatory to its decision, and the parties agree that the Court shall take one of them—an appeal will lie.

*Stewart v. Forbes*, 1 M'N. & G. 137, commented on; *Craig v. Duffus*, 6 Bell, 308, approved. *Dudgeon v. Thomson*, 1 Macq. 714.

2. *Remitter of cause to Court below.*—*Appeal committee.*—When the House of Lords remits a cause to the Court below, in order to have a certain thing done, the power of the Court below to do the thing ordered, is not to be disputed.

When the House retains an appeal, but makes a remit to the Court below for the purpose of some additional proceedings, such additional proceedings ought to be reported when completed—and on receipt of the report the House will resume consideration of the cause and take cognisance as well of the matter involved

in the appeal as of the additional proceedings had under the remit.

The Appeal Committee drops with the Session; therefore if no report is made upon petitions which have been referred to it, such petitions, at the close of the Session, return to the House, which thereupon resumes its original jurisdiction. *Martins v. Cairns*, 1 Macq. 766.

#### JURY.

*What question for.—Evidence.—Misdirection.*—When there is evidence that by possibility may lead to a particular result, the question of fact ought to be left with the jury.

Therefore, where the Judge, holding that certain facts were proved, told the jury that the pursuers could not recover, and they thereupon returned a verdict for the defendants,—the House decided that the Judge had done wrong; for that the question of fact was one; not for him, but for the jury to determine. *Paterson v. Wallace*, 1 Macq. 748.

#### LAW REPORTING.

*Opinion of the Lord Chancellor as to.*—"We are now overwhelmed with law reports; and I think that every law reporter deserves well of his country who condenses; and that he best performs his duty who gives only the pith of what is necessary to the decision." *Dudgeon v. Thomson*, 1 Macq. 724.

#### LEASE.

*Assignment of by tenant, where stipulation to contrary.*—Where a tenant, in the face of a stipulation to the contrary, assigns a lease, and the landlord does not accept the assignee, but permits the original tenant to continue in possession, he cannot afterwards stop his operations summarily by interdict.

So where a tenant becomes bankrupt, there being a clause in his case interdicting assignment, the trustee or assignee under the sequestration cannot disturb the tenant's possession, although he may be entitled to claim the profits for the creditors. *Borrows v. Colquhoun*, 1 Macq. 691.

#### LEGACY DUTY.

*On real estate when converted.*—Prior to the alteration of the law by Mr. Gladstone's Act, legacy duty was not chargeable upon real estate, except where its conversion into personality took place under some imperative trust or direction to that effect.

Hence, where the conversion was a thing done at discretion, for the convenience or benefit of the parties, the claim of the Crown did not arise.

In such cases the words "to pay" did not necessarily denote conversion. They might be taken for "to transfer."

The case *In re Beane*, 2 Crompt. & Mes. & Ros. 206, before Lord Chief Baron Lyndhurst, held by Lord St. Leonards not to have been overruled either by *Attorney-General v. Simcor*, 1 Exch. R. 749, or by *Attorney-General v. Mangles*, 5 M. & W. 190. *Advocate-General v. Smith*, 1 Macq. 760.

[To be continued.]

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

— Still attorneyed at your service. — *Shakespeare.*

SATURDAY, APRIL 21, 1855.

### TESTAMENTARY AND CHANCERY REFORM.

#### SOLICITORS' REMUNERATION.

WE are not surprised that the proposed association of the Testamentary Jurisdiction Court with the Court of Chancery should call forth the remarks of a writer in *The Times*,<sup>1</sup> and, connected therewith, that the subject of Solicitors' costs should attract his attention. It may be observed, however, that, beyond all doubt, a large saving of expense would really be effected by enabling a Vice-Chancellor to sit in the Testamentary Court in the absence of the Judge, and by employing the Accountant-General and other officers to act in matters in the Testamentary Office analogous to those in Chancery. It will be recollected that the Equity Judges are largely engaged in the construction of wills and the administration of the assets of deceased persons, and consequently are peculiarly conversant in the more difficult part of the business which, we presume, will come before the Testamentary Court. If the judicial and administrative business be properly arranged and subdivided, it cannot signify whether the new Court be called "a Court of Probate," or a Testamentary Court. Improved forms of proceeding are to be adopted and skilful officers employed, and the testamentary and intestate business will, of course, be kept distinct from that of the Court of Chancery, as effectually as the proceedings of the three great Common Law Courts are kept apart from each other, though they may be conveniently conducted under one roof, as we trust all the Courts

of Law and Equity will be under the proposed plan of a concentration of all the Metropolitan Tribunals in the centre of the ancient Inns of Court and Chancery.

In discussing the objection raised to the proximity of the new Testamentary Court to those of the Chancery, *The Times* comes down, with its usual force of expression, on a topic connected with all Courts, and, indeed, with all operations, namely, the *Costs* thereof. And amongst other topics, Lord Lyndhurst's speech on the 26th March, on the "Chancery Despatch of Business Bill," is adverted to, in regard to the direct interest of Solicitors in increasing the *length* of documents, without which the rules of taxation would not sufficiently remunerate them for their labour and responsibility. But this estimate of payment by the quantity as it were of the *materials* employed, is applicable to many other things besides professional services. To a certain extent the "raw material," as it were, is a fit ingredient in the estimate; but should not be confined to it. The skill of the workman, the man of science, or the professor, should also be duly appreciated, and it is in this respect the present rules of taxation are evidently faulty and imperfect. The just claims of the legal practitioner to "a fair day's pay for a fair day's work" are not to be put aside by a joke. Lord St. Leonards says, that Solicitors "must take the rough with the smooth. It would not do to take all the plums and leave the rest of the pudding." Now it happens that the *smooth* work (which compensated for much that was unpaid for) has been taken away by the effect of the recent alterations, and the *rough* or difficult work remains without adequate payment. So also (to follow the other jocose illustration) the plums have

<sup>1</sup> See *The Times*, 14th April.



been abstracted and the rest of the pudding left without a due proportion of the sweets that made it palatable. It is forgotten that pleadings, states of facts, briefs, reports, warrants, and various routine proceedings, are now abolished in the larger class of Chancery suits, and simple forms of proceeding adopted, whilst all the labour and responsibility of the investigation remains the same as before. The facts are to be ascertained,—deeds, documents, correspondence, accounts, &c., &c., are to be perused, examined, and their consequences and effect considered,—and all this labour is to be undergone for a fee of 13s. 4d., though a week or a month may have been consumed in the operation.

When the expense of the education of the Solicitor is considered,—the large capital required in the conduct of his business,—the multitude of services he must render in carrying it on, for which no specific charge can be made,—the responsibility he incurs,—the losses he must sustain,—to say nothing of the anxious pains he bestows and the incessant occupation of his thoughts in behalf of his clients' interests,—it must be admitted that the common and ordinary fees allowed by the Taxing Master in the altered state of practice are inadequate and insufficient, if not paltry and degrading.

When Lord Langdale, a Judge of the greatest strictness, in reviewing the claims of Solicitors, stated "that in many cases a Solicitor was compelled, in his own defence, to put his client to unnecessary expense in order to obtain some remuneration for services in respect of which he could not otherwise make a legal demand," he did not mean (as the writer in *The Times* thinks proper to suppose) that the Solicitor *cheated* his client,—any more than the writer of a review, who is paid by the number of pages he composes, cheats the proprietor by making more extracts than absolutely necessary, when after he has bestowed many days of research and racked his brain for ingenious criticism, he would be ill-rewarded for his learning and judgment, unless he indulged in some well-selected but less laborious illustrations of the conclusions at which he arrives, and whereby, on the whole, he is only adequately recompensed.

The writer in *The Times* asks whether "these disclosures" (of the unprofitable nature of proceedings in Chancery) "do not contain a warning to our Law Reformers to try some less *sweeping change* than that suggested by their admiration for a system of procedure which works so ruinously both

for Solicitor and client." It is indeed these "sweeping changes," so ill-considered as they usually are, and working so injuriously, that bring the proposed amendments or alterations in the law into such disrepute, and where "the middle term" can safely be found seems yet to be sought for. It is, perhaps, not unreasonable to conjecture, that if the numerous Law Reformers who have been engaged for a quarter of a century or more in attempting the so-called amendments in our system of jurisprudence had been associated with experienced practitioners, the result might have been different. We should then have had the advantage of the practical knowledge of men actually engaged in the business of the Courts, and who could estimate the probable results of the changes proposed.

### TESTAMENTARY JURISDICTION BILL.

WE proceed now to select from several parts of the Bill the further clauses relating to Officers of the Court, the Fees of Court, and Stamps, Salaries of Officers, and Retiring Allowances, the Compensations to the Judge and Registrars, and the Application of Surplus Fees. The clauses are as follow :—

#### *Appointment of temporary officers, deputies, &c.*

In case any principal registrar, or other officer appointed, or to be appointed by virtue of this Act, shall by reason of ill-health or other infirmity become temporarily incapable of performing the duties of his office, or shall for any other reasonable cause, to be allowed by the Lord Chancellor, apply to be relieved from the discharge of the duties thereof for a certain time only, it shall be lawful for the Lord Chancellor to appoint some fit and proper person to discharge the duties of such office for any period not exceeding six calendar months at any one time, and the person so appointed shall during such period have all the power and authority of the principal registrar or other officer in whose place he shall be so appointed, and shall be paid by such principal registrar or other officer such sum by way of salary or allowance as shall be agreed upon between them respectively, to be approved of by the Lord Chancellor; s. 87.

It shall also be lawful for the Lord Chancellor to authorise and direct one of the registrars of the Court to discharge the duties of the principal registrar during vacations, or during the temporary or occasional absence of the principal registrar, and the registrar so authorised and directed to discharge such duties shall, during vacations, or such temporary absence as aforesaid, have all the power and authority of the principal registrar; s. 88.

If any person hereby appointed to any office under this Act, or any person who shall accept any office under this Act, shall engage in any other employment whatever, whilst he holds such office, or if such person, being or having been a proctor, or solicitor, or attorney, shall directly or indirectly receive or secure to himself any continuing benefit from any business or firm in which he may have been engaged previously to his appointment to such office, the person so offending may be removed from his office by order of the Lord Chancellor, and shall be rendered incapable of afterwards holding any office, situation, or employment in the Court; s. 89.

*Practitioners appointed to offices shall cease to practise.*

Every proctor hereby appointed to any office under this Act, and every proctor, attorney, or solicitor who shall be appointed to, and shall accept any office under this Act, shall cease to practise as a proctor, or attorney, or solicitor, and shall forthwith procure himself to be struck off the list of proctors, or off the roll of any of her Majesty's Courts at Westminster on which his name may be; s. 90.

*Fees of court and stamps.*

It shall be lawful for the Lord Chancellor, and he is hereby required to prepare or cause to be prepared, before the time appointed for the commencement of this Act, a table of fees, specifying what fees are proper to be demanded and taken by the officers of the Court, and he is hereby empowered from time to time to add to, reduce, alter, or amend the same as he may deem necessary and proper, and cause the same to be inserted and published in the *London Gazette*; and no other fees than those specified and allowed in such table of fees shall, under any pretence whatsoever, be demanded or taken by such officers; s. 95.

No officer of the Court shall be entitled to receive or retain for his own use any fee or reward whatsoever; and if any officer of the Court shall, for anything done or pretended to be done relating to his office, situation, or employment, or under colour of doing anything relating to his office, situation, or employment, wilfully take, demand, receive, or accept, or permit or allow any person whatsoever to take for him or on his account, or for or on account of any person by him named, any fee, gift, gratuity, or emolument, or anything of value other than his salary, or what is allowed or directed to be taken by him under this Act or any order to be made under this Act, the person so offending, when duly convicted, shall forfeit and pay the sum of 500*l.*, and shall be removed from any office, situation, or employment he may hold in the Court, and shall be rendered, and he is hereby rendered incapable of ever thereafter holding any office, situation, or employment in the Court, or otherwise serving her majesty, her heirs, or successors; s. 96.

Any such offender may be prosecuted, either by information at the suit of her Majesty's Attorney-General, or by criminal information be-

fore her Majesty's Court of Queen's Bench, or by indictment.

None of the fees payable to the officers of the Court, except as hereinafter mentioned, shall be received in money, but the same shall be received by a stamp denoting the amount of the fee which otherwise would be payable: provided always that it shall be lawful for the Lord Chancellor to order that any fees which it may appear to him cannot conveniently be collected by stamps may be received in money; s. 98.

All the provisions of an Act passed in the session of Parliament holden in the 15 & 16 Vict. intituled, An Act for the relief of Suitors of the High Court of Chancery, and of any Act or Acts incorporated therewith, so far as respects the collection of fees by means of stamps, shall extend and apply to the fees to be received under the provisions of this Act; save only that the Commissioners of Inland Revenue shall cause separate and distinct accounts to be kept of all sums of money received or collected by them under the provisions of any orders to be made under the provisions of this Act, and of all costs, charges, and expenses incurred by them, or by their direction in carrying the same into effect; and it shall be lawful for the said Commissioners to pay, and to deduct and retain out of such monies, all such costs, charges, and expenses, and also to deduct all sums of money repaid on allowances for spoilt stamps, and after such deduction they shall from time to time, and in such manner as the Lord Chancellor shall by any order direct, pay the same into the Bank of England, to the credit of the Accountant-General of the Court of Chancery, to be placed to an account there, to be entitled "The Testamentary Fee Fund Account;" s. 99.

Such of the Fees payable to the officers of the Court as shall be directed by the Lord Chancellor to be collected in money shall, at such times and in such manner as shall be directed by the Lord Chancellor, be paid into the Bank of England, to the credit of the said account, to be entitled, "The Testamentary Fee Fund Account;" s. 100.

The provisions contained in the several Acts for the time being in force relating to stamps under the care and management of the Commissioners of Inland Revenue shall, so far as the same are applicable, and consistent with the provisions of this Act, in all cases not hereby expressly provided for, be of full force and effect with respect to the stamps to be provided under or by virtue of this Act, and to the vellum, parchment, or paper on or to which the same stamps shall be impressed or affixed, and be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually, to all intents and purposes, as if such provisions had been herein repeated and specially enacted with reference to the said last-mentioned stamps and sums of money respectively; s. 101.

*Salaries of officers and retiring allowance.*

There shall be paid to the several officers named in Schedule (D.) to this Act the several salaries or yearly sums set opposite to their respective names or titles in the same Schedule, and to such of the other officers, clerks, servants, and messengers appointed or to be appointed by or under the provisions of this Act, such salaries, yearly sums, or other remuneration as the Lord Chancellor, with the consent of the Commissioners of her Majesty's Treasury, shall from time to time direct; s. 103.

It shall be lawful for the Lord Chancellor, by order, to remove any officer or person attached to or employed in the Testamentary Office of the Court who shall be afflicted with any infirmity which shall disable him from the due execution of his office, and who shall refuse to resign or become incapable of resigning the same, and upon such removal to order to be paid to such officer or person so removed an annuity or retiring allowance, not exceeding two-third parts of the yearly sum or salary to which he shall be entitled at the time of his removal; s. 104.

It shall be lawful for the Lord Chancellor, by any order made on a petition presented to him for that purpose, to order, if he shall think fit, to be paid to any person holding any office or appointment in the Court, or the offices thereof, who shall be afflicted with some permanent infirmity disabling him from the due execution of his office, or shall have continued in any office or offices of the Court for 20 years, and shall be desirous of resigning the same, a superannuation allowance, and thereupon such officer or person shall be entitled to receive such superannuation allowance, not exceeding two-thirds of his salary, as the Lord Chancellor, with consent of the Commissioners of her Majesty's Treasury, shall think proper to direct; and in ascertaining and awarding the amount of such superannuation allowance the Lord Chancellor and the Commissioners shall take into consideration the whole period during which any such officer or person shall have been permanently employed in any office or situation in the Court or any of the offices thereof: Provided always, that as to such of the said officers as shall have been previously officers of or employed in the Prerogative Court, or in some Ecclesiastical Court, the time during which they shall have been so employed shall for the purposes of this clause be deemed and taken as part of the time during which they shall have continued to be officers of the Court: Provided also, that the Lord Chancellor shall in every such order state the cause for making the same, and shall cause a copy of such order to be laid on the table of the Commons House of Parliament within 14 days after the making of the same, if Parliament be then assembled, and if Parliament shall not then be assembled, then within 14 days next after the meeting thereof; s. 105.

*Compensations to officers.*

And whereas by the abolition of the present

mode of procedure in matters testamentary, the Judges and Deputy Judges, registrars and deputy registrars, and other persons holding office in the Ecclesiastical Courts, who are lawfully entitled to receive certain salaries or fees payable in respect of the transaction of business in matters testamentary, will be wholly deprived thereof, and it is reasonable and fit that compensation should be made to such persons in respect of such losses: Be it therefore enacted, That it shall be lawful for every such Judge, Deputy Judge, registrar, deputy registrar, and other persons to claim compensation in respect of such salaries and fees from the Commissioners of her Majesty's Treasury, within six months from the time when this Act shall come into operation; and it shall be lawful for the Commissioners of her Majesty's Treasury, by examination on oath or otherwise, and in such manner as they shall think fit, to inquire into the nature of the office, and what was the tenure, and what was the clear annual amount, on an average of five years immediately preceding the 1st day of January, 1855, of the lawful salaries and fees in respect of which compensation shall be so claimed, and to require the production of such evidence as they shall think fit, and the said Commissioners of her Majesty's Treasury shall have regard to the fact whether such office shall have been exercised jointly or by deputy, in which case any joint holder of the said office, or the person performing the duties of the office by deputy, shall be entitled to make claim in respect of the emoluments actually received by him under or by virtue of any arrangement entered into with the other joint holder, or the deputy, as the case may be; and the Commissioners of her Majesty's Treasury shall allot to such officers, joint holders of offices, and deputies, and other persons, such sum or annual sums in respect of their several claims respectively, on an average of five years immediately preceding the 1st day of January, 1855, as to them shall seem just: Provided, that in no case shall any such officer, joint holder of an office, or deputy, be entitled to receive any such compensation unless he shall have held such office, joint office, or deputyship for the space of three years immediately preceding the 1st day of January, 1855; and provided also, that every such officer, joint holder of an office, or deputy, who shall have held such office, joint office, or deputyship for more than three years, but less than six years immediately preceding the 1st day of January, 1855, shall be entitled to one-half only of the amount of emolument so enjoyed by him as aforesaid, to be computed on the average of the whole time during which he shall have held such office; s. 106.

*Compensation to Judge.*

There shall be awarded to the Judge of the Prerogative Court, by way of compensation, an annual sum equal in amount to the net annual value of the lawful fees and emoluments of his office, according to such an average prior to

the time of this Act coming into operation as the said Commissioners of her Majesty's Treasury shall think proper, and such annual sum shall be payable to him during his life; s. 109.

If any person entitled under this Act to make such claim for compensation as aforesaid is or shall be appointed to any office or employment under this Act, the payment of the compensation awarded to him under this Act, so long as he shall continue to receive the salary or emoluments of such office or employment, shall be suspended if the amount of such salary or emoluments be equal to or greater than the amount of such compensation, and if any such person is or shall be appointed to any office or employment under this Act the salary or emoluments of which may be less than the amount of such compensation, such person shall be entitled to receive the difference existing between the amount of such salary or emoluments and the amount of such compensation, and no more; s. 110.

*Compensation to registrar.*

There shall be awarded to Charles Viscount Canterbury, as a compensation for the fees, perquisites, profits, and emoluments of the said office of registrar of the Prerogative Court of the Lord Archbishop of Canterbury, an annuity to be calculated upon the average yearly net receipts of the legal fees, perquisites, profits, and emoluments of the said office during such period next preceding the time when this Act shall come into operation as the Commissioners of her Majesty's Treasury shall think proper; and such annuity shall commence from the time of this Act coming into operation, if the said Charles Viscount Canterbury shall then be in possession of the said office, and if not, then from the time at which the said Charles Viscount Canterbury would have become entitled but for the passing of this Act to the full possession of the said office, and to the receipt of the fees, perquisites, profits, and emoluments thereof, and shall be paid to the said Charles Viscount Canterbury thenceforth during his life; provided, that if the said annuity by way of compensation shall exceed the annual sum of 3,000*l.* then the said annuity of 3,000*l.* payable under the last-recited Act to the said Charles Viscount Canterbury shall, from and after the commencement of the said annuity by way of compensation, cease and determine, and shall not be payable to the said Charles Viscount Canterbury; and in case the annuity awarded by way of compensation shall be less than the net annual sum of 3,000*l.*, the provision contained in the said recited Act passed in the Session of Parliament held in the 2 & 3 Wm. 4, for the payment unto the heir male of the body of the said Charles Viscount Canterbury out of the said Consolidated Fund of such a sum of money annually as, together with the said fees, perquisites, profits, and emoluments, would make up a clear income to him of 3,000*l.*, shall, from and after the commencement of the said annuity by way of compensation, be applicable

to and be in force for the purpose of making up, together with the said annuity so to be awarded in lieu of such fees, perquisites, profits, and emoluments as aforesaid, a clear annual income of 3,000*l.* to the said Charles now Viscount Canterbury during his life; s. 111.

All the claim, title, and interest which at the time of the passing of this Act the Reverend Robert Moore, clerk, has or is entitled to in or in respect of the building at present used as the public registry of the Prerogative Court shall at the time appointed for the commencement of this Act vest in the principal registrar for the time being of the Court, subject to the payment of such rents and the performance and fulfilment of such contracts in respect thereof as the said Robert Moore, his executors or administrators, shall be subject to at the time of such vesting; s. 112.

In lieu of and compensation for such claim, title, and interest as aforesaid, the said Robert Moore, his executors or administrators, shall be entitled to receive out of the fund hereinafter provided in that behalf, such sum or sums of money and in such instalments as shall be agreed upon by two competent persons, one of whom shall be appointed by himself, his executors or administrators, and the other by the Commissioners of her Majesty's Treasury, and in case such persons disagree they shall appoint a third, whose award shall be final; s. 113.

The compensation payable to the Reverend Robert Moore, Clerk, in respect of such claim, title, and interest as aforesaid in or in respect of the said building at present used as the public registry of the Prerogative Court, shall be paid to the said Robert Moore, his executors or administrators, out of the fund standing in the name of the Accountant-General of the Court of Chancery to the aforesaid account, "The Testamentary Fee Fund Account"; s. 114.

All salaries, compensation allowances, and superannuations or retiring allowances shall grow due from day to day, but shall be payable on the 3rd day of February, the 3rd day of May, the 3rd day of August, and the 3rd day of November in every year, or on such other days as the Lord Chancellor shall from time to time by any order direct, and except where otherwise provided by this Act, shall be paid to the parties entitled thereto out of the Fund standing in the name of the Accountant-General of the Court of Chancery to the aforesaid account entitled "The Testamentary Fee Fund Account," by virtue of any order or orders to be made from time to time for that purpose, without any draft from the Accountant-General; s. 115.

*Application of Surplus Fees.*

If at the end of any year there shall be a surplus standing to the credit of the said account, "The Testamentary Fee Fund Account," after the payment of the several salaries and sums of money charged thereon by this Act, it shall be lawful for the Lord Chancellor, by any order, to direct that the whole or any part of

such surplus shall be paid into the receipt of the Exchequer, to the credit of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, at such time and in such manner as he shall think fit; and in the event of the said Fee Fund being at any time insufficient to defray the salaries, compensations, and other charges thereon, it shall be lawful for the Commissioners of her Majesty's Treasury and they are hereby authorised and required to direct the amount of such deficiency to be charged upon and paid out of the Consolidated Fund; s. 116.

#### SCHEDULE (D.)

|                                 | Annual Salary. |
|---------------------------------|----------------|
| The Principal Registrar . . .   | £2,000         |
| The Five Registrars, each . . . | 1,500          |

### BILLS OF EXCHANGE BILLS.

#### OPINIONS OF THE PRESS.

"Two measures, bearing vague and inexpressive titles, as relating to 'Bills of Exchange and Promissory Notes,' but of very important, and, as we apprehend, dangerous operation, lie now for consideration before the House of Commons. One of these Bills has originated in the Upper House, where it was introduced and carried under the high auspices of Lord Brougham. Of the second measure, Messrs. Keating and Mullings have undertaken the 'carriage' in the Commons, and have carried it successfully through the ordeal of the second reading. Both measures are submitted to a Select Committee, the members of which were nominated last evening, by whom the best is to be selected; or the best features of either picked out and amalgamated in some third measure.

"Differing considerably in their working machinery and practical details, the two Bills embody a common principle, and lead up to a common object. They both make provision for enhancing the obligatory character of bills and promissory notes; for removing, still further than is at present the case, the responsibilities incurred by the grantor or acceptor under that description of security from the category of ordinary debts; and for facilitating the recovery of the values advanced upon, or represented by, such bills or notes respectively.

"As the law stands, the holder of a bill or note enjoys many privileges over almost all other classes of creditors. His debt is one of those which are legally held to 'prove themselves.' No stress of law can compel him to furnish detailed 'bills of particulars,' to verify by indisputable evidence every item in a long series of transactions, or to establish, point by point, the facts and the *bona fide* character of a whole catalogue of dealings between himself and his alleged debtor. In actions founded upon bills of exchange, the plaintiff at the hardest push need prove nothing more than

the acceptor's handwriting, and that he has himself given some reasonable 'consideration' for the document. If A. have but signed the bill, though it may be shown most indisputably that the security was lost, stolen, or passed into the hands of B. under any conceivable fraudulent circumstances or false pretences, this passage in its history will not bar C.'s claim to recover, provided he can but persuade a jury that it came legitimately into his hands, and that he sues in the character of an 'innocent holder.'

"These advantages are very considerable. They may not give the holder of a bill of exchange any avowed priority over other creditors, but they simplify the legal processes, and hasten the issue of execution against the property or person of his debtor, and thus enable him, in many cases, to come in first in the race. Bills and notes, in fact, hold an intermediate place between common claims upon current accounts or simple contract debts, and those obligations for which actual property has been assigned as security, by means of mortgage, bill of sale, or other impignatory formula. The position occupied by the holder of a bill of exchange is very formidable, affording a strong vantage ground either against the debtor, or over his fellow-creditors. Hitherto the superiority enjoyed by this class of claimants has, we believe, been generally found sufficient for all the ordinary requirements of commerce. Yet the authors of both the Bills now before the Legislature propose to enhance it every considerably, introducing at the same time, into the Law of Debtor and Creditor, so far as relates to this particular species of obligation, some elements of a highly objectionable nature, whether regarded in their actual working, or as establishing a precedent for future modifications of the code.

"Without attempting to describe the technical mechanism of the Bills in question, their leading provisions may be thus outlined. In Lord Brougham's measure it is proposed to establish a registration Court for dishonoured bills of exchange. The particulars of such bills being duly recorded on the files of this Court, and notice of dishonour served upon all the parties liable, whether as drawer, acceptor, or indorsee, immediate execution can be issued against their effects, with no further formality than that required to obtain the leave of a Judge at Chambers. Mr. Keating dispenses with the establishment of any new Court, working his Bill by means of the processes and functionaries already existing under the provisions of the Common Law Procedure Act. The old formula of the writ of summons, with the necessity of proving a personal service, is accordingly retained; but with the important difference, that when once served the writ will ripen as a matter of course into judgment and execution, unless within eight days the defendant can find means to satisfy a Judge at Chambers that he has some valid defence to the action. It is not left to his own option whether the case shall come before a jury. The

fiat of the Judge is summary and irreversible. And as in the prescribed interval the day of service of the writ and all Sundays or holidays are included, it will often happen that less than six business days are left for the debtor to collect the facts, and frame formal affidavits for the purpose, not of stopping further process, should his defence be a sound one, but simply of obtaining permission to defend himself in the Common Courts of Law.

"In both Bills the leading principle is to substitute the decision of a Judge at Chambers for that of a jury. To say nothing of the pernicious precedent thus set for the invasion of an Englishman's constitutional right to have all his alleged crimes or failings—commercial as well as moral—referred to the abutment of a jury of his peers, the particular Court whose jurisdiction is to supersede that 'palladium of our liberties' is especially objectionable. It has become something like an axiom, even among lawyers, that no twelve square yards of ground have been the scene of more injustice than those occupied by the Judges' Chambers! If in practice the Judges granted 'leave to defend' to applicants on very slight pretences—which would probably be the case—the measure will but interpose fresh forms and charges in the process of the action. Any fraudulent debtor, by the aid of a skilful solicitor, can make up a most plausible affidavit on his own behalf. And yet the sole object for which the Bills are introduced is the discomfiture of fraudulent debtors.

"The alternative presented under either of the Bills would be this. If the Judge undertakes to sift the statements contained in the affidavits filed by the respective parties, he will assume in his single person the functions of the twelve jurors, and conduct in a hurry, and almost in secret, the inquiry which should be carried on deliberately, in open Court, and before a critical Bar. If, on the other hand, he takes the affidavits without examination, his interference is merely superfluous. These will be the results in defended actions. Where no defence is attempted—that is to say, in ninety-nine out of every hundred suits, on the average—the effect of either Bill would be to enable the holders of negotiable securities to hurry on process, which they may carry to execution in about a week and a day from the first commencement, so as to distance all other claims, and very often even to frustrate the endeavours of the debtor or his other creditors to secure an equal distribution of his property under the Court of Bankruptcy! Here, also, another disadvantage of the proposed change becomes apparent, as it will open a new avenue, in addition to the already sufficient opportunities, for the creation of collusive preferences in favour of particular claimants by dishonest and insolvent debtors.

"There remains but a single class of evils for which the measures offer any substantial remedy—those, namely, which arise when the defendant puts in frivolous and untenable pleas, merely for the sake of gaining time, and in-

creasing the expenses of the suit. The testimony of Lord Campbell was cited in a recent debate, to the effect that no fewer than 16 of such vexatious defences stood for hearing on a single day in the Court of Queen's Bench, every one of which was disposed of in a few minutes, no attempt being made to substantiate pleas that were manifestly frivolous. This may, no doubt, be true. Obstinate debtors are very possibly enabled at present to delay and harass their creditors, sometimes to the extent of stopping process, upon the most indisputable claims, for some months during the long vacation. But it must be borne in mind that for this delay, the defendant, if solvent, is ultimately forced to pay, in the shape of costs on both sides. Should the debtor be insolvent, the creditor certainly loses both money and costs. In that case, however, the offender is punished in another shape. The Commissioners of Bankruptcy and Insolvency hold extensive powers of imprisonment, which they invariably exercise with stern severity whenever it can be shown that the insolvent party has 'frivolously and vexatiously' defended an action.

"Altogether, there seems abundant reasons to adopt the conclusion arrived at by Mr. Gurney, that the present is an instance of the proposed remedy being worse than the disease. 'The disease,' he remarked, 'was the inconvenience of a few creditors; the remedy would be the ruin of a multitude of debtors.' As the honourable member for Lynn belongs to a family through whose hands there passes a constant stream of bills, to the amount in the aggregate of many millions sterling per month, he is both well qualified to give an opinion on the subject and little likely to depreciate the interests of the creditor class in such transactions. On the other hand, we are told that a system similar to that suggested in the present Bills has worked well in Scotland. Not only the preambles of certain Acts of Parliament—which do not count for much—but the authority of the Lord Chief Justice and the Lord Advocate is affixed to that assertion. But the injurious influences of almost all commercial enactments are rather negative than positive and apparent. The business transactions of every country become invariably moulded to the state of the law, and the circumstance that the law seems to work easily and regularly is no evidence of its expediency. Bills of exchange are the life blood of commerce, and yet in Scotland the system of trading by negotiable securities has not attained to anything approaching the development which it has reached in this section of the United Kingdom. Among our Scottish fellow-subjects, moreover, the restricted use of bills and promissory notes is, in great measure, supplied by the 'cash credit' system adopted by the banks. In the absence of that supplementary contrivance, the law relating to bills of exchange would, we apprehend, be found, most unmistakeably, not to 'work well,' even in Scotland; and it will be highly inexpedient to attempt an assimilation in the

code of the two countries, at all events, until their systems of credit and banking can be also assimilated."—From the *Morning Chronicle* of April 18.

### EXTENSION OF THE CHARITABLE TRUSTS' ACT.

THE Lord Chancellor, in support of this Bill, stated, that the authority of the Court of Chancery was required for the purpose of carrying out certain parts of the present Act, and he proposed to give power to the Commissioners to do those acts themselves, subject, however, in all cases, to an appeal to the Court of Chancery. The Commissioners stated in their report, that when parties came to them for the purpose of obtaining a new scheme for a charity, and were told that the Commissioners sanctioned their applying to the Court of Chancery, that amounted in effect to a refusal of what the parties wanted, because the parties thought it would involve them in a Chancery suit, so that in far the larger number of cases that they had sanctioned, no application had been made to the Court. It was proposed, therefore, to allow the Commissioners to do these acts themselves, subject only to an appeal to the Court.

There was another case in which the Commissioners had found they had no authority to act. It often happened that there were charities that were appropriated to particular parishes or districts. Those parishes were divided, and then came the question, how was the charity to be appropriated. It was proposed to give power to the Commissioners to apportion the charities to the different parts of the parish, subject, as in the other case, to an appeal to the Court of Chancery.

The Commissioners had also found that there was a mode of saving expense to charities by the legal estate, as lawyers termed it, being vested in some official trustee; and it was proposed that power should be given for that purpose.

The former Act was further deficient with reference to enabling parties to make exchanges or partitions of property. The Commissioners had suggested that power should be given to them for that purpose; and it was proposed to give it.

It was also proposed to give power to have bills of costs taxed by a reference to the Taxing Master of the Court of Chancery.

In cases where the Commissioners called for accounts, and their call was disobeyed, it was proposed that such disobedience

should be treated as a contempt of the Court of Chancery. The Bill pointed out what the accounts were, that the Commission should from time to time be empowered to call for.

Such are the principal objects of the Bill, of which the following is an analysis; and the more important clauses are set out fully:—

1. The Charitable Trusts' Act, 1853, and this Act to be construed together.

2. Repeal of the provisions for determining the third Commissioner.

3. Power to appoint additional inspectors.

4. Every act of the board may be sufficiently authenticated by the seal of the Commissioners, and the signature of their secretary or of one Commissioner, save where the signature of two Commissioners are required, and in such cases by the seal of the Commissioners and such two signatures.

5. The eighth section of the principal Act, requiring all orders, certificates, and schemes made or approved by the board to be entered in their books, shall be construed as requiring copies of such orders, certificates, and schemes to be so entered, and all such entries may be sufficiently certified by the signature of the secretary or of one Commissioner; and any writing purporting to be a copy extracted from the said books of the entry therein of any act or proceeding of the board, and to be certified as aforesaid, shall be received as evidence of the same act or proceeding.

6. The board, or any Commissioner, or inspector may require written accounts and statements and answers to inquiries relating to any charity, or the property or income thereof, to be rendered, or made to them respectively by all or any of the following persons; that is to say,

Trustees or persons acting or concerned in the administration of the charity, its property or income, or in the receipt or payment of any moneys thereof:

Agents of any such trustees or persons:

Depositories of any funds or moneys of the charity:

Persons in the beneficial receipt of any funds thereof, or of any income, or stipend, therefrom:

Persons whom the board or such Commissioner or inspector shall have reasonable ground for considering to be in the possession of any property of the charity, or to be subject to any trust duty or charge for the benefit thereof:

Persons having the possession or control of any documents concerning the charity, or any property thereof:

And all other persons whose evidence the board, or such Commissioner or inspector, shall think material to the matter in question:

And the board or such Commissioner or in-

spector may require the persons rendering or making any such account, statement, or answer to verify the same by oath or otherwise, and may administer such oath.

7. The board or any Commissioner or inspector may further require any persons having the possession or control of any documents in which any charity shall be solely interested to transmit the same to the office of the Commissioners for examination, or, where such persons shall not be the trustees of the charity, for permanent deposit with the Commissioners, or to be dealt with as they shall think fit.

8. The board or any Commissioner or inspector may require all or any such trustees and persons as aforesaid to attend before them respectively, at such times and places as may be reasonably appointed, for the purpose of being examined in relation to the charity, and to answer such questions as may be proposed to them, and to produce upon such examination any documents in their custody or power relating to the charity or the property thereof, and may examine upon oath or otherwise all such persons and all persons voluntarily attending, and may administer such oath: Provided always, that no person shall be obliged to travel in obedience to any such requisition more than 10 miles from his place of abode.

9. All requisitions made under the foregoing authorities shall be made respectively by the order of the board, or by receipt, under the hand of the Commissioner or inspector making the same.

10. Any person refusing or wilfully neglecting to comply with any such requisition, or with any order of the board, made under the provisions of this Act, or destroying or withholding any document required to be produced or transmitted by him, shall be taken to be guilty of a contempt of the High Court of Chancery, and shall be liable to be attached and committed by such Court on summary application by the Commissioners to the same Court, or to any Judge thereof, and shall pay such costs attending such contempt as the said Court or Judge shall direct.

11. Any person wilfully rendering or making to the board or to any Commissioner or inspector any false account, statement, or answer, shall be deemed guilty of a misdemeanor, and being thereof convicted may be punished by imprisonment, with or without hard labour, for any term not exceeding three years.

12. The board, for the convenient prosecution of local inquiry respecting any charities, may employ any fit persons as their assistant inspectors for the purposes only of such inquiry, who shall have the same authorities for those purposes as might be exercised by any inspector, except so far as such authorities may be limited by the order of the board; and the board may also employ such surveyors, auditors, solicitors, and agents as they may require for ascertaining the value of any charity estates, or the expediency of any proposed dealings therewith, or the value of and title to any property proposed to be acquired or dealt with for

the purposes of the charity, or for obtaining, examining, and auditing the accounts of any charity, or for serving any orders, precepts, or notices, or for any other purposes.

13. The Board may make or allow to any persons so employed by them reasonable payment for their services and expenses, and may make to any persons rendering to them or to any Commissioner or inspector any accounts, statements, or answers, or attending to be examined as aforesaid, reasonable payment for their expenses; and the board, where they shall consider that any such payments ought to be provided out of the funds of the charity, may order the trustees or administrators of the charity to make such payments out of the income or property thereof; and where any costs or expenses shall have been occasioned by the wilful default of such trustees or administrators, the board may order that the same be paid by such trustees or administrators personally.

14. The board shall have power, subject to the appeal hereinafter provided, to make orders for the following purposes, and which shall be effectual for the same purposes accordingly; that is to say,

- (1.) For the appointment of trustees of any charity in the place of any former trustees or in addition to the existing trustees, or where there may be no trustees:
- (2.) For the removal of any trustees thereof for sufficient cause:
- (3.) For vesting any real estate of a charity except copyhold hereditaments, but including leaseholds, in the trustees thereof for the time being, and for vesting in them any copyhold hereditaments with the consent of the lord of the manor for the time being, or for enabling any person to surrender the same to the use of such trustees:
- (4.) For entitling such trustees to call for a transfer of any stock in the public funds or of any shares of stock of any public company respectively belonging to the charity, and for vesting in them all personal estate thereof including choses in action, and a title to sue for the same:
- (5.) For vesting any real estate of a charity, except copyhold hereditaments, but including leaseholds, and for vesting any copyhold hereditaments, with the consent of the lord of the manor for the time being, in the official trustee of charity lands:
- (6.) For the payment, transfer, or deposit of any principal moneys, stock in the public funds, or stock or shares of any public company, or securities belonging to a charity, to or with the official trustees of charitable funds:
- (7.) For entitling such official trustees to call for the transfer of any such stock or shares:
- (8.) For removing, after inquiry, any officer of a charity unfit for or neglecting the discharge of his duties, or for misconduct or other sufficient cause, but where there shall be a special visitor of the charity appointed by the founder, and not absent from the



kingdom or under incapacity, with his consent :

- (9.) For assigning to any officer of a charity removed from or resigning his office a pension or retiring allowance, to be provided wholly or partly out of the income of his successor, or any income of the charity :
- (10.) For removing persons improperly placed or retained in any almshouse or charitable institution, and for establishing any proper objects of the charity therein :
- (11.) For ascertaining and declaring the proper objects of any charity :
- (12.) For establishing any such scheme for the administration of a charity as the Court of Chancery would have jurisdiction to establish :

15. It shall be lawful for the board to make orders for any of the foregoing purposes, either upon the application of any parties or of their own authority; and the 43rd section of the principals Act, which authorises the applications therein mentioned to be made by all or any of the trustees, or persons administering or claiming to administer, or interested in any charity, or any two or more inhabitants of the parish or place within which it is administered or applicable, shall not be construed to preclude such applications by any other persons authorised thereto by the certificate of the board.

16. Any Court or Judge having jurisdiction to order the transfer of stock in the public funds, or stock or shares of any public company, to the official trustees of charitable funds, shall have power also to authorise such trustees to call for a transfer of such stock or shares; and may also order the payment to the same trustees of any principal moneys of any charity, under the same circumstances in which the transfer of stock to them may now be ordered.

17. Where any parish or ecclesiastical district entitled to the benefit of a charity has or shall have been divided into separate parishes or ecclesiastical districts, the board may apportion the benefit of the charity between each new parish or district, or any portion thereof taken from the parish or district originally entitled to the whole benefit, and the remainder of such last-mentioned parish or district as, upon a consideration of the purposes of the charity, the population of each parish or district, and other circumstances, they may think fit, and also to apportion the principal endowments between such parishes or districts if thought fit, and to appoint separate trustees of any part of the endowments.

*[To be continued.]*

## LAW OF ATTORNEYS AND SOLICITORS.

### SUMMARY JURISDICTION OVER PERSONAL MISCONDUCT.

MR. BURDON had been made defendant as executor in a suit, and had employed the

firm of Lawrence, Crowdy, and Bowlby, as his solicitors therein. It appeared that Mr. Burdon had remitted several sums of money to Mr. Bowlby to be paid into Court, which he had not done, but applied the same to his own use, and this motion was made on them, jointly and severally, to pay the amount into Court.

The Vice-Chancellor *Stuart* said,—

“This is a case of great importance, and it is attended by some singular circumstances. The application is against three individuals, officers of the Court, for the payment of a sum of money which was remitted to one of them for the purpose of being paid into Court. There is no doubt that a solicitor, who is an officer of the Court, receiving money to be paid into Court, and not paying it, is guilty of misconduct and neglect of duty; and that, under the summary jurisdiction over him as its own officer, this Court can compel him to repay the money.

The question here is free from any difficulty as to the jurisdiction of the Court in that respect. The difficulty of those who support this application is, that it is an application against three individuals, that each of them should be considered as guilty of personal misconduct and personal neglect of duty in respect of the non-payment of the money, which is only proved to have reached the hands of one of them. If I were at liberty to treat the case as one in which the money can be held as having constructively reached the hands of all three, Mr. Burdon, who makes this application, would be entitled to an order that all three should be compelled to pay the money. The difficulty in his case is to show that there has been misconduct by any one of the three except Bowlby.

It is only by an application of the principle of the Law of Partnership that the other two can be held to be liable. But the summary jurisdiction of the Court is an entirely personal jurisdiction, and is intended to give relief in cases of personal misconduct and personal neglect of duty. In cases of that kind there is a jurisdiction to compel the performance of duty.

In support of this application, it is said, that these three individuals carried on business as partners, and were, as partners, in this suit, the solicitors of Mr. Burdon; and to that extent the case of Mr. Burdon against the three would be entirely sustainable but for a difficulty created by his own conduct, voluntarily pursued. The duty of solicitors is one that necessarily involves a great degree of personal confidence. The duty of a firm of solicitors, as discharged by a firm, can only be discharged by one member of the firm efficiently, or by means of an agent, an individual clerk, or servant acting as agent for all. The singularity of this case is, not that Mr. Burdon merely corresponded with one member of the firm, and did not address his letters to the firm, but that he never corresponded with any member

of the firm at all except Bowlby, and when Bowlby, in regard to this particular remittance, by letter requested Mr. Burdon to remit to 'us,' i. e. the firm, Mr. Burdon voluntarily by his own act did not trust the firm but trusted Bowlby, by sending the money to Bowlby alone, and not to the firm as Bowlby required. He sent the cheques, and gave the control of the money to Bowlby singly and individually. I apprehend, especially on a question of this kind, that when a person employing a partnership of solicitors does conduct his dealings with one member of that partnership, on such a footing as that the other members of the partnership have not the ordinary means of knowing what was done between the client and their partner, which they otherwise would have had if the money had been remitted to the firm or the letters addressed to themselves, it is too much to say, that the person so dealing has a right of personal complaint against those whom he thus kept in ignorance. Persons who voluntarily deal with an individual partner, so as to put the nature of the transaction between them less within the knowledge of the other partners than it would be if the business were conducted in the ordinary way, cannot complain against those to whom no knowledge of that particular transaction is brought personally home. Under such circumstances, I apprehend, the person who voluntarily so deals with a member of the partnership must bear the consequences of that individual partner's misconduct, which he has not given to the other members of the firm the opportunity of preventing.

I beg it may be distinctly understood, that I dispose of this case upon the footing, that by his own acts and conduct Mr. Burdon so conducted himself, that he did not give the other partners the opportunity of knowing what was going on between him and Bowlby. The case I admit to be one of extreme difficulty, attended with circumstances of great singularity; for, as to one of these individuals (Mr. Lawrence), a course was pursued, which I think eminently requires the attention of the Court. This gentleman chose to allow his name to be used by other individuals, who were to conduct in his name the business of solicitors; and this gentleman allowed himself to be represented as an officer of the Court, when he was not transacting any business as such officer. I think that any person who places himself in that situation incurs a great responsibility; and if the case here had been merely that of Mr. Lawrence, I should have had greater difficulty than I feel upon it. But when I consider that Mr. Lawrence was in this case a partner with Crowdy, and that the conduct of Mr. Burdon with reference to the partnership was such as in my opinion to deprive the partnership of the fair and proper opportunity which Bowlby invited—if I held that Crowdy, who was an active partner, is absolved by the conduct of Mr. Burdon, I see no ground, however I may disapprove of the conduct of Mr. Lawrence, by which I can hold that he (Mr. Lawrence) is liable when Crowdy

is absolved. The principle of my decision is, that Mr. Burdon, by his own conduct, deprived himself of that right against the other members of this firm to which he would otherwise have been entitled. This application under the summary jurisdiction of the Court to establish the case of personal misconduct and personal neglect of duty by Lawrence and Crowdy seems to me, from the conduct of Mr. Burdon, entirely to fail. I must refuse the order against Mr. Crowdy and Mr. Lawrence. The right to the order against Bowlby is clear; for that he has been guilty of neglect of duty and personal misconduct is perfectly plain. I shall give no costs on either side." *In re Lawrence and others, ex parte Burdon*, 2 Smale & G. 367.

## LAW OF COSTS.

### WHERE ONE OF TWO SUITS, UNNECESSARY.

THE trustees of a marriage settlement transferred, contrary to the trusts, part of the trust fund to the husband, and two of the trustees afterwards became bankrupt. The other trustee, who was the father of the wife, gave by his will to the trustees of the settlement a sum of stock. The daughter and the other *cestui que trustent* under the settlement instituted one suit to have the breach of trust made good, and the daughter alone another against the father's executor seeking payment of the legacy: *Held*, that one suit would have been sufficient; and the costs of one alone were allowed. *Bensusan v. Nehemias*, 4 De G. & S. 381.

### OF SUIT CAUSED BY TRUSTEES' MISCONDUCT.

On a mortgagee of settled estates requiring to be paid off, or to have the interest increased, the tenant for life proposed a new mortgagee at the same rate. The trustees insisted on being the proper persons to carry the transaction into effect, and procured another mortgagee, but at a higher rate; and, in order to raise the expenses thereby incurred, they proceeded to sell the estate under the ordinary powers of sale and exchange in the settlement, whereupon the tenant for life filed a bill to restrain the sale: *Held*, that the conduct of the trustees was unjustifiable, and that they ought to pay all the costs of the suit. *Marshall v. Sladden*, 4 De G. & S. 468.

### RIGHT OF CROWN.

An intestate was supposed to have no next of kin, and the Solicitor of the Treasury obtained letters of administration on behalf of

the Crown, and recovered the estate, but afterwards a person, proved to be next of kin, procured letters of administration and a revocation of the administration which had been granted on behalf of the Crown, and then instituted a suit to recover the estate, which was ordered to be paid over to the plaintiff: *Held*, that the Crown was not entitled to the costs of this suit. *Kane v. Maule*; *Kane v. Reynolds*, 2 Smale & G. 331.

## POINTS IN EQUITY PRACTICE.

### PARTIES TO SUIT TO RECOVER ASSETS.

THE personal representatives are the proper persons to sue to recover the assets, and parties interested in the estate will not be allowed to sue for that purpose, unless it be satisfactorily shown that assets exist which might be recovered, and which, but for such suit, would probably be lost to the estate.

The rule as to joining the partner of the deceased with the personal representatives in a suit for administration, without charging and proving collusion (if it can be supported in the absence of any additional special circumstances) does not apply to such a partnership as a joint stock company.

After a decree for administration, a legatee cannot sue the debtors to recover the assets, in the absence of any refusal or neglect of the personal representatives to do so. *Stainton v. Carron Company*, 18 Beav. 146.

### DEFENCE OF STATUTE OF FRAUDS AT HEARING.

A defendant, who had not by his answer claimed the benefit of the Statute of Frauds, was not allowed to have it at the hearing. *Baskett v. Cafe*, 4 De G. & S. 388.

### ADMINISTRATOR AD LITEM OF MARRIED WOMAN A TRUSTEE.

An administrator *ad litem* of a married woman does not sufficiently represent her separate estate to enable the Court to decide how far that estate is liable in respect of her acts as a trustee. *Shipton v. Rawlins*, 4 De G. & S. 477.

### FILING SUPPLEMENTAL CLAIM IN NATURE OF BILL OF REVIEW.

A supplemental claim, in the nature of a bill of review, cannot be filed without leave. A motion of the defendant to take such a claim,

filed without leave, off the file for irregularity was adjourned to the hearing of the claim, and leave to file the claim was then given on payment of costs. *Matthews v. Pincombe*, 4 De G. & S. 485.

### INJUNCTION AT HEARING.

*Quere*, whether at the hearing an injunction can be granted which the bill or information did not seek? *Attorney-General v. Birmingham and Oxford Junction Railway Company*, 4 De G. & S. 490.

### ANSWER BY INCORPORATED COMPANY.

Where an incorporated company, in answer to an interrogatory in a bill as to documents which were in the power of agents formerly and not now in their employment, stated ignorance as to the fact, but did not state that they had made any particular inquiries of such former agents: *Held*, that the answer was sufficient, there being no special circumstances alleged applicable to any particular document or any particular person. *M'Intosh v. Great Western Railway Company*, 4 De G. & S. 502.

### REDEMPTION BY JUDGMENT CREDITORS.

Judgment creditors not allowed successive periods of three months each to redeem, but one period of three months is given to them, or any of them. *Radcliff v. Salmon*, 4 De G. & S. 526.

### WRIT OF NE EXEAT REGNO.

Writ of *ne exeat regno* granted on an affidavit that the defendant, an Englishman, resident in Italy, was about shortly to return to Italy. *Anon.*, 4 De G. & S. 547.

## FRIENDLY SOCIETIES.

### IN RE THE ECLIPSE.

In this case a decision very important to all Societies has been pronounced by Vice-Chancellor *Page Wood*. When we recollect that it was stated in Parliament last Session, that one-half the adult male population of the kingdom are members of the numerous friendly societies of Great Britain—any point affecting the law upon which their rights depend must be entitled to serious attention.

The point decided by this case is the serious one of the mode and manner of "dissolution" of such societies.

The Acts of Parliament on these Societies are many and confused, and the improvements of later Statutes are not retrospective in all cases.

The 10 Geo. 4, c. 56, s. 26, enacts, "that it shall not be lawful for any such society, by any rule at any general meeting or otherwise, to dissolve such society without obtaining the votes of consent of five-sixths of the existing members, &c., &c., to be testified under their hands individually and respectively." Sect. 9 of the same Act enacts, that no confirmed rule shall be altered or repealed, except at a general meeting of the members convened by public notice, and other strict formalities.

This was a very small and unimportant society and the funds very trifling, but still the principle is the same. The society was enrolled under the 10 Geo. and a dissolution had been pronounced by the president, but was disputed by the vice-president and a majority of the committee of management.

The dispute in this Society had been for nearly 12 months under discussion before the magistrates, who decided that they could not go into the scrutiny of votes that seemed necessary for the proper decision of the case. A petition was then filed in Chancery under the 16th and 17th sections of the Act, the latter of which puts such cases virtually in *forma pauperis*.

This petition came on to be heard before his Honour the Vice-Chancellor Wood, when Mr. Roxburgh, for the petitioners, pointed out that if the proceedings for a dissolution were to be guided by the 9th section, then the society was not legally dissolved, as the parties had not complied with the requisites of that section, and that no further discussion need ensue.

On the other hand, it was argued by a barrister from the Common Law Bar, who appeared for the respondents, that the 26th section stood alone for the regulation for dissolving the Society, and all the requisites of the 9th section were not required.

His Honour said, he was struck, at first, with the argument of counsel for the petitioners, that it would be strange if more formality were required to alter one rule than to rescind the whole; yet that when the whole provisions of that 26th section were considered, it would seem that the greater formality of requiring the consent of five-sixths to be in writing to a formal consent. It seemed to him sufficient to supersede the form of the 9th section; and as therefore the consideration of the due number of signatures was to be arrived at, he would take that scrutiny of votes at his chambers.

Several tedious inquiries into this scrutiny took place at chambers, and the solicitor who attended for the petitioners against the counsel of the respondents argued that the affirmative of the dissolution was the sole defence of the respondents. It was their duty to prove the due signatures of their consents, and not for him to attempt the negative of that proposition.

His Honour, however, cast that duty on the solicitor (against his own argument, and who could have no means of proving the due signature of that deed), and it was obviously the *finesse* of the respondents to leave the peti-

tioners to the proof of their acts, which they may have felt was quite impossible to do themselves. The result of three tedious adjournments was, that no proof was given of the execution of this important document, and his Honour subsequently gave judgment in Court—dismissing the petitioners as upon a due dissolution; and his Honour directed that his secretary should give out a copy of his judgment, from which the following summary is extracted, which shows the nicety of the inquiry and importance of a due scrutiny and proof of signature,—the latter part of which, however, was disregarded.

The decision turned upon a single vote—the odd man; and his Honour's judgment was to this effect:—"If I decided that Workman, the Vice-President, was not duly expelled, there would be one-sixth part of a man against the dissolution; but if I decided he was not duly reinstated there would be five-sixths part of a man in favour of the dissolution."

Without deciding expressly or giving any express judgment on this vote, his Honour did pronounce the society dissolved, and therefore by inference decided against this voter, although he had been expressly reinstated upon a summons before a magistrate, whose ordinary duty it is to decide such matters.

Some further evidence having been afterwards arrived at which established that several of the signatures to the consent were forged, a new petition was filed, and on that coming on to be heard, his Honour was satisfied that at least one signature was forged, and that as that was enough to turn the scale, he now decided that the Society was not duly dissolved, but he held that it was "defunct" by not keeping up its meetings.

It is here only necessary to remark that it was the parties who acted in, and availed themselves of, this fraudulent dissolution who had not kept up the meetings, while the parties opposing the dissolution had held together and kept up their payments. It is submitted that this case is worthy the consideration of the members of the Legislature in framing the Bill now before the House of Commons, and if the Legislature really mean that a meeting of the society should be held before dissolution, to make the language plain enough to be understood by the expounders of the law.

H.

## EASTER TERM EXAMINATION.

THE Examiners appointed for the examination of persons applying to be admitted Attorneys, have appointed *Tuesday*, the 1st May, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to take the examination, which will commence at 10 o'clock precisely.

The Articles of Clerkship and Assignment, if any, with answers to the questions as to due service, according to the regulations ap-

proved by the Judges, must be left on or before *Saturday*, the 21st instant, at the Law Society's office.

Where the articles have not expired, but will expire during the Term, the Candidate may be examined conditionally; but the articles must be left within the first seven days of Term, and answers up to that time. If part of the Term has been served with a *Barrister, Special Pleader, or London Agent*, answers to the questions must be obtained from them, as to the time served with each respectively.

A Paper of Questions will be delivered to each Candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each Candidate is required to answer *all* the Preliminary Questions (No. 1); and also to answer in *three* of the other heads of inquiry, viz.:—*Common Law, Conveyancing, and Equity.*

The Examiners will continue the practice of

proposing questions in *Bankruptcy* and in *Criminal Law* and *Proceedings before Justices of the Peace*, in order that Candidates who may have given their attention to these subjects, may have the advantage of answering such questions, and having the correctness of their answers in those departments taken into consideration in summing up the merit of their general examination.

Under the New Rules of Hilary Term, 1853, it is provided that every person who shall have given notice of Examination and Admission, and "who shall not have attended to be examined, or not have passed the Examination, or not have been admitted, may *within one week after the end of the Term* for which such notices were given, *renew* the notices for Examination or Admission *for the then next ensuing Term*, and so from time to time as he shall think proper;" but shall not be admitted until the last day of the Term, unless otherwise ordered.<sup>1</sup>

<sup>1</sup> This rule has been made in order to avoid the practice of giving double notices.

## ATTORNEYS TO BE ADMITTED.

### Queen's Bench.

LAST DAY OF EASTER TERM, 1855.

Added to List pursuant to Judge's Orders.

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

|  |                                      |
|--|--------------------------------------|
| Arbouin, Sidney, 23, Somerset Street, Portman Sq.; York Terrace; and Beaumont Street . | R. Few, Henrietta Street             |
| Saunders, Thomas, 24, Devonshire Street, Islington; and Regent Square .                | C. F. Chubb, South Square            |
| Tucker, Edward, 2, Glengall Terrace, Peckham; and Bath .                               | W. C. Gill, Bath                     |
| Woolbert, Frederic Thomas, 4, Lamb's Conduit Place; and Lincoln's Inn Fields .         | E. T. Whitaker, Lincoln's Inn Fields |

### RENEWED NOTICES.

*Last Day of Easter Term, 1855, of Persons who gave Notice of Admission for Hilary Term, 1855, pursuant to the Rule of Court of Hilary Term, 1853.*

|  |   |
|--|---|
| Atchison, John Simons, Walthamstow .   | F. M. Selwyn, King's Bench Walk; E. Clowes, King's Bench Walk |
| Barker, Thomas John, 26, Albany St., Regent's Park; Pentonville; and Wem, Salop .  | H. J. Barker, Wem   |
| Cawley, John, 16, Clifford's Inn; and Castle Northwich .                           | W. W. Blake, Castle Northwich                                 |
| Clegg, Alfred, B. A., Manchester .   | W. B. Parker, Tan-yr-allt-Llandulas; I. Hall, Manchester      |
| Darley, James Jacob, 69, Euston Square; Upper Gower St.; and Sidmouth Street .     | G. Goldney, Chippenham; J. H. Street, Raymond Buildings       |
| Dawson Peter Henry, 13, Lamb's Conduit Street, Holborn; and Longton .              | F. Deacon, Preston  |
| Gregory Charles, Hampstead; and Eyam .   | E. Lambert, John Street                                       |
| Griffith, William, Much Wenlock .  | A. Phillips, Shiffnal   |
| Grimmer, William Henry, 8, Carlton Villas, Holloway; Tachbrook St.; and Bradford . | M. Foster, Bradford; J. Swithinbank, Leeds                    |
| Mayers, Henry Stewart, Warwick .   | T. Nicks, Warwick   |
| Morice, George, Aberystwyth .  | J. Hughes, Aberystwyth; F. R. Roberts, Aberystwyth            |
| Palmer, Gillies Charles, Grantham .  | W. Ostler, Grantham   |

|   |                                |
|---|--------------------------------|
| Parker, Francis, 15, Bernard Street, Russell Square; and Worcester          | J. Parker, Worcester           |
| Rhodes, Arthur, Muswell Hill  | H. Masterman, Bucklersbury     |
| Rider, James, 4, Moreton Street, Featherstone Buildings; Chatham and Leeds  | F. Ferns, Leeds.               |
| Rudyard, Frederick Colville, Macclesfield                                   | T. Parrott, Macclesfield       |
| Smith, Joseph, 35, Alfred Street, Islington; Dalby Terrace; and Cockermouth | J. Steel, Cockermouth          |
| Soames, Frederick, 33, North Audley Street                                  | J. Lawford, Throgmorton Street |

## APPLICATIONS TO THE COURT TO TAKE OUT OR RENEW CERTIFICATES.

*Last day of Easter Term, 1855.*

Bickham, Charles Curry, 32, Clarendon Road, Maida Hill; and Reading.  
 Thompson, Edwin Samuel, 1, Charles Sq., Hoxton; and 24, Culford Road, North.

## APPLICATIONS TO A JUDGE AT CHAMBERS TO TAKE OUT OR RENEW CERTIFICATES.

*9th May, 1855.*

Acland, William, 10, Lansdowne Place, Clifton; and Bombay.

Andrews, Thomas, 21, Brunswick Square; Kirkdale, near Liverpool; and Bootle.

Baddeley, Thomas, jun., 38, Gloucester Terrace, Mile End Road.

Bamford, John, Ashborne.

Bullock, Richard, 67, Warren Street, Tottenham Court Road; 157, High Street, Camden Town; Sheffield.

Cooper, James, 3, Bedford Row, Hampstead; and Compton Street.

Darke, Samuel Wallwyn, 6, Great Newport Street Leicester Square; and Camberwell.

Edmonds, Richard, jun., Penzance.

Fowler, Henry Hartley, 17 Lower Calthorpe Street, Gray's Inn Road.

Giles, George, 103, St. Martin's Lane, Westminster; and Pimlico.

Grayson, James, 25, Devonshire Street, Queen's Square.

Gummer, Stephen Henry, Gloucester Place, New Road; 16, Milton Street, Dorset Square; Bridport Grove Terrace, Grove Road; Gloucester Place; and York Buildings, New Road, Walsall; Great Quebec Street.

Hawthorn, Edwin Herbert, 92, Booth St., Hulme, Manchester.

Hick, Hen., Middlesborough; and Stokesley.

Hulbert, John Henville, 90, Gloucester Ter., Paddington; and Cambridge Street.

Jenkins, James Gidoin, 8, Craig's Court, Charing Cross; Acton Green.

Knuckey, Francis Burdett, 53, Margaret St., Clerkenwell.

Leith, Frederick, 15, Clapham Road Place.

Lovegrove, Thomas, 38, Woburn Place, Russell Square.

Marshall, George, 16, Adam Street, Harper Street, New Kent Road; and Plymouth.

Rayson, Edward Knowles, 112, Brook St., West Square, Lambeth.

Richardson, Henry Francis, Bayswater; and Hastings.

Rogers, Joseph, Tonbridge; and Culford Road, North, De Beauvoir Square, Hackney.  
 Smart, Samuel, 10, Prince's Square, St. George's-in-the-East; 47, Chancery Lane; New York; and New Orleans.

Stephens, John Beeching, Maidstone.

Ward, James, 13, Elm Street, Gray's Inn Road; and Drury Lane.

Waugh, Edward, Tonbridge.

Whitley, George, 38, Liverpool Street, New Road; and Argyle Street.

Wood, Cornelius, Manchester.

Woodgate, William, 41, Argyle St., King's Cross; and City Road.

Young, Henry Wells, 10, Gray's Inn Sq.; Thornhill Terrace; Barnsbury Terrace; Sidmouth Street; Harper Street; and Great Ormond Street.

## NOTES OF THE WEEK.

## EXCHEQUER CHAMBER SITTINGS.

The Court will hear Errors from the Queen's Bench on the 24th and 26th April, and from the Common Pleas and Exchequer on the 9th May and following days.

## LAW APPOINTMENTS.

Mr. Robert Daniell Newill, Solicitor, has been appointed Clerk to the Magistrates at Wellington, Salop.

The Queen has been pleased to appoint John Joseph Arthur Shakespear, Esq., Barrister-at-Law, to be a member of the Legislative Council of Jamaica.

The Queen has been pleased to direct letters patent to be passed under the Great Seal, constituting and appointing the Right Hon. Sir George Cornwall Lewis, Bart., Barrister-at-Law, and Charles Stanley, Viscount Monk, Barrister-at-Law, to be two of the Commissioners for executing the offices of Treasurer of the Exchequer of Great Britain and Lord High Treasurer of Ireland.—From the *London Gazette* of 17th April.

The Attorney-General for Ireland has filled up the vacancies created in the office of second Crown prosecutor for the last four counties on the Leinster Circuit as follows:—

Mr. H. O'Hara, for Tipperary.

Mr. M. O'Donnell, for Waterford.

Mr. W. Ryan, for Wexford.

Mr. S. Curtis, for Kilkenny.

Mr. Underwood French and Mr. Altham Francis Owen were, on the 18th inst., admitted Proctors of the High Court of Admiralty.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lord Chancellor.

*In re Harris's Patent.* April 18, 1855.

PATENT.—OMISSION TO PAY FEES ON FILING SPECIFICATION.—ACCIDENT.

*Where the omission to pay the fees on lodging the specification for a patent within the time limited, had arisen by the result of accident, leave was given to proceed with the application for the patent.*

THIS was a petition for leave to proceed with this application for a patent, in respect of a new method of condensing steam, notwithstanding the time for paying the fees on lodging the specification had expired.

*Cairns* in support on affidavits, that the petitioner was a working man and unable to raise the money until two days before the time expired, and that the letter containing the remittance to the patent agents had been delayed in the delivery.

The Lord Chancellor said, that as a general rule no favour would be shown to persons who allowed themselves to be driven to the last moment, but that the present being the result of an accident, an order might be taken.

## Master of the Rolls.

*In re Twerton Market Act.* April 16, 1855.

WILL.—CONSTRUCTION.—JOINT TENANCY WITH REMAINDERS OVER.

*A testator, by his will, gave his dwelling-house, garden, and premises to his daughter for and during the term of her natural life, and from and after her decease to the child or children of her body lawfully to be begotten, and the heirs of their respective bodies lawfully to be begotten: Held, that the will created a joint tenancy for life, with a reservation for the several inheritances in remainder.*

THE testator, by his will, gave his dwelling-house, garden, and premises to his daughter, Sarah Marden, for and during the term of her natural life, and from and after her decease he gave the same dwelling-house, garden, and premises to the child or children of her body lawfully to be begotten, and the heirs of their respective bodies lawfully to be begotten. The premises having been taken under the above act, a question arose as to the estate taken by the daughter under the will.

*Cur. ad. vult.*

The Master of the Rolls said, that the clause created a joint tenancy for life with a reservation for the several inheritances in remainder.

*Scorah v. Bays.* April 17, 1855.

MOTION FOR LEAVE TO SUE IN FORMA PAUPERIS BEFORE BILL FILED.

*Held, that an order for leave to sue in forma*

*pauperis will not be granted before a suit is pending or bill filed, for the purpose of avoiding payment of the fee on filing and for stamping the copies for service on the several defendants.*

THIS was an application previous to filing this bill for an order for leave to sue in *forma pauperis*, to avoid the payment of the stamp on filing and the fee for stamping the bill for service, there being several defendants.

*G. Lake Russell* in support.

The Master of the Rolls said, that he had no jurisdiction to interfere with the established practice of the Court, requiring a suit to be pending before the order to sue in *forma pauperis* could be made, however great a hardship the payment of the stamp and fees might be, and the application was accordingly refused.

## Vice-Chancellor Kindersley.

*Beeching v. Lloyd.* April 17, 1855.

SUIT TO RECOVER BACK DEPOSITS.—EQUITY.—PARTIES.—DEMURRER.

*Where there appears sufficient on the bill itself to entitle plaintiffs to any relief at the hearing, a demurrer for want of equity will be overruled.*

*In a suit by shareholders to recover back deposits, on the ground of misrepresentation, the defendant demurred, on the ground he had become a director after such misrepresentations were made: Held, nevertheless, that he had properly been made a party.*

THIS bill was filed by two shareholders in the New South Wales Coal and International Steam Navigation Company, on behalf of themselves and the other shareholders who had paid deposits, for the return thereof, against the defendant, John Leonard, and five other persons. A demurrer was put in by John Leonard, on the ground that he had not become a director until after the issue of the prospectus, and that there were no further applications for shares afterwards.

*Baily and J. T. Humphry* in support; *Glassey and Tripp*, contra.

The Vice-Chancellor said, that the question was, whether there appeared sufficient on the bill itself to entitle the plaintiffs to any relief at the hearing, as if so, the demurrer must be overruled. The case charged was one of gross fraud, and that by means of such fraud the plaintiffs and the persons they represented had been induced to contribute sums of money to form the company in question. It appeared that Leonard, the demurring party, had become a director with the full knowledge of what had taken place, and therefore, although he might not be one of those originally making the mis-

representations charged, he continued them, and was an accessory after the fact. The demurrer would be therefore overruled—costs reserved.

**Vice-Chancellor Stuart.**

*Ince v. Robinson.* April 17, 1855.

**SUIT TO IMPEACH TRANSACTIONS OF ALLEGED LUNATIC.—EVIDENCE TAKEN ON COMMISSION.**

*A motion was refused in a suit impeaching certain transactions entered into by a lady against whom two commissions de lunatico inquirendo had issued, for leave to read as evidence at the hearing, the testimony of certain witnesses examined on behalf of the deceased on such commissions.*

THIS was a motion on behalf of the defendant in this suit, which was filed impeaching certain transactions entered into by the late Mrs. Cumming, for leave to read as evidence at the hearing of the cause the testimony of certain witnesses who had been examined on behalf of the deceased on the two commissions de lunatico inquirendo, upon such testimony being verified by the shorthand-writer's notes.

*Craig and Joyce* in support; *Bacon and Morris*, contra.

The Vice-Chancellor said, that the motion must be refused, without costs.

**Court of Queen's Bench.**

*Hutchinson v. Marker.* April 18, 1855.

**PROMISSORY NOTE.—CONDITIONAL ORDER [TO PAY.—NEGOTIABLE INSTRUMENT.**

*A promissory note made by the defendant payable to R. or order on demand, and on which R. had indorsed as follows:—"In the event of my death, the amount of this note is not to be demanded of the maker, but the same is to remain at interest and ultimately is to be divided equally between the children of my daughter:" Held, not to be a negotiable instrument—it not being an unconditional promise to pay.*

In this action by the indorsee against the maker of a promissory note, it appeared that it had been made by the defendant payable to his mother-in-law, Mrs. Richardson, or order on demand, as a security for moneys she had advanced and paid as surety for him. Mrs. Richardson had indorsed on the note as follows:—"In the event of my death, the amount of this note is not to be demanded of the maker, but the same is to remain at interest and ultimately is to be divided equally between the children of my daughter, Mrs. Marker." On the trial, before *Erle, J.*, at the Guildhall sittings at the sittings after Hilary Term last, the defendant obtained a verdict, with leave to the plaintiff to move if the Court should be of opinion the note in question was a negotiable instrument.

*Lush* now moved accordingly.

The Court said, that as the payee and those claiming under her were only entitled to demand payment during her lifetime, the note was not an absolute undertaking to pay. In order to constitute a good promissory note, there must be an unconditional promise to pay, and in the present case there was only a promise to pay if called on during the lifetime of the payee. The rule would therefore be refused.

**Court of Common Pleas.**

*Swan v. Dakins.* April 17, 1855.

**PRIVILEGE FROM ARREST UNDER COUNTY COURT ACT OF PRIEST IN ORDINARY TO HER MAJESTY.—HABEAS CORPUS.**

*Held, that one of the priests in ordinary at the Chapel Royal is privileged from arrest under a commitment issued on judgment summons under the 9 & 10 Vict. c. 95, s. 99,—such commitment being in the nature of an execution and not of punishment.*

*And semble, that the proper mode to obtain discharge from such arrest is by habeas corpus, the writ of privilege not issuing to the County Court.*

THIS was a motion to discharge the defendant from imprisonment under a commitment issued upon a judgment summons in a County Court, under the 9 & 10 Vict. c. 95, s. 99.

*Byles, S. L.*, in support, on the ground that the defendant was privileged as being one of the priests in ordinary at the Chapel Royal.

*Milward*, contra.

The Court said, there was no question but that if this had been an application to a Superior Court out of which a writ of *ca. sa.* had issued, the defendant would have been entitled to his discharge; but it was contended this commitment was in the nature of a punishment. There was no question that if this were a commitment for a contempt or for punishment, the defendant's privilege would not apply; but, on consideration, it seemed that this commitment was in the nature of a qualified execution, given by the Act of Parliament to get the money adjudged to be due by the compulsory imprisonment, and that it was therefore in the nature of an execution, and not of a punishment for contempt. The Statute went on to say that the person committed could be discharged by leave of the Judge. The fair meaning of the enactment was this, that if the money were paid the Judge became a ministerial officer to authorise the discharge of the person committed; and therefore, although there was to be an order of the Judge for the discharge of the person committed, yet if the money was paid, the party would be entitled to that order, and the Judge could exercise no discretion to detain him. The case was therefore the same as if an application had been



made to be discharged from process out of the Superior Courts. It was further said that the party ought to have applied to the Court out of which the process had issued; but, according to the old practice in such cases, a writ of privilege issued out of the Court where the arrest took place, on which the question was adjudicated. In the present case, however, it was not shown that any such writ could be issued, and as this therefore was the only application the defendant could make to obtain his discharge, he was entitled on the ground of such privilege as a servant of her Majesty to be discharged on *habeas corpus*.

#### Court of Exchequer.

*Taylor v. Crowland Gaslight and Coke Company.*  
April 17, 1855.

COUNTY COURTS' JURISDICTION, WHERE ONE OF PARTIES CORPORATION.—"DWELL."

Held, that the County Courts have jurisdiction under the 9 & 10 Vict. c. 95. s. 58, although one of the parties is a corporation.

Held, that such corporation is to be taken to "dwell" where it exists, for the purpose of

carrying on its trusts, and if it be within 20 miles of the plaintiff, the County Court has jurisdiction under s. 60.

THIS was a rule nisi to tax the plaintiff's costs of the trial in this action on the higher scale, although he had only obtained 7*l.* verdict. It appeared that the plaintiff sued the company to recover a large sum, although obtaining the above amount only, and it was contended that the County Courts' Act did not apply where one of the parties was a corporation.

*Shee*, S. L., and *W. Digby Seymour*, showed cause against the rule, which was supported by *M. Chambers* and *Tapping*.

The Court said, that the jurisdiction of County Courts under s. 58, was general, and extended to corporations or quasi corporations as well as to individuals; with respect to the plaintiff and defendant dwelling within 20 miles of each other within s. 60, as a corporation was said to dwell nowhere, in order to put a sensible construction on the Act, the corporation must be held to dwell in that spot where it existed for the purpose of carrying on its business. The rule would therefore be discharged, with costs.

### ANALYTICAL DIGEST OF CASES,

#### SELECTED AND CLASSIFIED.

#### SCOTCH APPEALS TO HOUSE OF LORDS.

[Concluded from p. 468, ante.]

##### LEGAL MAXIM.

Explanation by the Lord Chancellor of the maxim,—"*Hard cases make bad law.*" *Dudgeon v. Thomson*. 1 Macq. 714.

##### LETTER OF CREDIT.

As contradistinguished from negotiable securities.—*Payment of forged draft*.—A letter of credit saying, "Please to honour the draft of A. to the extent of 460*l.* 9*s.*, and charge the same to the account of B.," is an authority to make the payment, but the possession of it by the person to whom it is addressed does not prove that the payment has been made.

To show that the payment has been made, there must be a draft by A.

Payment of a forged draft is no payment as between the person paying and the person whose name is forged.

The person presenting the letter of credit is not necessarily the person entitled to make the draft. Therefore, the bankers to whom the letter of credit is addressed ought to see that the signature to the draft is genuine. If they do not, the loss will be their own.

When, for a sum paid down, a banker grants a letter of credit, he must show that it has been complied with, or pay back the money.

In such a case, the banker cannot insist on having the letter of credit brought back to him.

The rules applicable to negotiable securities do not hold with respect to letters of credit.

*Semble*, that the laws of England and of Scotland on these points correspond. *Orr v. Union Bank of Scotland*, 1 Macq. 513.

##### PEERAGE.

1. *Presumption in favour of heirs male of body*.—In the absence of the original limitation, the law presumes that a Scotch peerage descends to the heirs male of the body of the original grantee. If there be anything certain in the law of Scotch peerages, it is this presumption in favour of heirs male.

Held, that the Rescissory Act of 17th Oct., 1488, annulled the Earldom of Glencairn, created by James 3; and that the Crown could not give effect to a patent which had been done away by Statute.

In peerage questions contemporaneous historians may be referred to.

The ordinary marking of the peers present on the rolls of Parliament has little regard to precedency; but on a commission from the Crown for holding a Parliament, the names would most probably have been set down in their proper places. *Glencairn Peerage*, 1 Macq. 444.

2. *Life*.—*Limitations to*.—*Created in Parliament*.—*Jurisdiction of Court of Session and House of Lords in Scotch*.—Held, that the Rescissory Act of the Scotch Parliament, 17th October, 1488, destroyed the dukedom of Montrose, created by James 3, and that the dukedom of Montrose, created by James 4,

was only for the life of the grantee. Remarks on life peerages.

When a peerage is rescinded by Parliament, it cannot be restored by the Crown. To effect restoration another Act of Parliament will be necessary.

Mere lapse of time is no bar to a peerage claim, although whether it may not be fit to prescribe some limitation, *quære*.

*Semble*, that Scotch peerages were originally territorial,—i. e., incident to, or accompanied by, tenure.

Peerages were often, for greater solemnity, created by the Crown in full Parliament; but the Parliament had no share in the act done. Thus, the creations by Richard 2, in his last Parliament, continued valid and effectual, although the Parliament itself and all its proceedings were subsequently annulled.

The opinion of Lord Chancellor Lord Loughborough, in the *Glencairn peerage case*, 1 Macq. 445, explained and confirmed.

Remarks on the jurisdiction of the Court of Session in Scotch peerage questions.—Lord St. Leonards of opinion that it is absorbed by the references from the Crown.

How the House of Lords has come to acquire jurisdiction in Scotch peerage questions.

Opinions of the Lord Chancellor and of Lord St. Leonards; the latter stating the entire concurrence of Lord Brougham, and the partial concurrence of Lord Lyndhurst, who had heard only a part of the argument. *Montrose peerage*, 1 Macq. 401.

3. *Creation of Scotch.—Proof.—Attainder.*—In the absence of the original patent or charter of creation, a certified copy of an enrolment of a commission under the Great Seal of Scotland and Royal Sign Manual, directing a baron to be created an earl, with confirmatory entries in the journals of the Scottish Parliament, held sufficient evidence of the creation of an earldom.

*Semble*, under the 7 Anne, c. 21, the effect of attainder upon a Scotch peerage is the same as the effect of attainder upon an English or British peerage.

Course of proceeding, when it appeared that a claimant's pedigree was proved, but that attainders stood in the way.

Motives and limits of the royal interposition in sanctioning the restitution of a Scotch peerage.

A Bill to remove attainder must have the Royal signature. *Earldom of Perth*, 1 Macq. 776.

#### PLEADING.

Strictness, accuracy, and precision of statement in all pleadings recommended. *Dudgeon v. Thomson*, 1 Macq. 714.

#### PRIVILEGES' COMMITTEE.

*Putting documents in evidence before.*—Method of putting documents in evidence before the Committee of Privileges. *Montrose Peerage*, 1 Macq. 402.

#### PURCHASER.

*Objections of title repelled.—Costs.—State*

of circumstances in which a party was congratulated by Lord St. Leonards on having to pay costs. *Kerr v. Marquis of Ailsa*, 1 Macq. 736.

#### RAILWAY DIRECTOR.

*Fiduciary character of.*—The director of a railway company is a trustee; and, as such, is precluded from dealing on behalf of the company, with himself, or with a firm of which he is a partner. *Aberdeen Railway Company v. Blaikie*, 1 Macq. 461.

#### SALE.

*Contract of.—Delivery.*—Difficulty of ascertaining from the opinions of the Court below whether the Law of Scotland corresponded or disagreed with the Law of England as to the operations of the contract of sale in transferring the property.

How far delivery is, or is not, essential by the Law of Scotland to the transfer of the property; whether the difference between the law of England and that of Scotland may not be one of phrase rather than of substance? *Melrose v. Hastie*, 1 Macq. 698.

#### SESSION, COURT OF.

*Effect of res judicata in, on House of Lords.*—*Quære*, how far *res judicata* in the Court of Session binds the House of Lords. *University of Edinburgh v. Lord Provost, &c., of Edinburgh*, 1 Macq. 485.

#### STATUTE.

*Retrospective operation of.—Disentailing Act.*—Although Courts of Justice are slow to ascribe a retrospective operation to any Statute, yet cases do arise occasionally in which this must be done.

The 16 & 17 Vict. c. 94, retrospectively corrects formal inaccuracies into which parties may have accidentally or incautiously fallen in carrying through disentailing proceedings under Lord Rutherford's Act. And for the purpose of correcting such mistakes the Act will affect rights actually in litigation prior to its passing. *Kerr v. Marquis of Ailsa*, 1 Macq. 736.

#### STOPPAGE IN TRANSITU.

*Goods in bonded warehouse.*—Remarks by the Law Peers on the doctrines of mercantile law as to the right to retention of goods deposited in a bonded warehouse in the name of A., who had sold to B., who again had sold to C. Great importance of the question; and regret expressed that, from the state of the record, the House was precluded from examining the decision complained of. *Melrose v. Hastie*, 1 Macq. 698.

#### TRUSTEE.

*Rules as to, when dealing with trust property.*—*English common law cases inapplicable.*—*Severance of legal and equitable jurisdiction.*—*Doctrine of bond fide consumptio et perceptio.*—It is a rule of universal application, that no director shall be allowed to enter into engagements in which he has, or can have, a personal interest, conflicting, or which may possibly

conflict, with the interests of those whom he is bound by fiduciary duty to protect.

So strictly is this principle adhered to, that no question is allowed to be raised as to the fairness or unfairness of the transaction; for it is enough that the parties interested object.

It may be that the terms on which a trustee has attempted to deal with the trust estate, are as good as could have been obtained from any other quarter. They may even be better. But so inflexible is the rule that no inquiry into that matter is permitted.

It makes no difference whether the contract relates to real estate or personalty, or mercantile transactions; the disability arising, not from the subject-matter of the contract, but from the fiduciary character of the contracting party.

The law of Scotland and the law of England are the same upon these points; both coming from the Roman Law, itself bottomed in the plainest maxims of good sense and equity.

The rules which govern fiduciary relations are equitable rules, unknown to the English Courts of Common Law. Consequently, in a case properly determinable by those equitable rules, the decision of a Court of Common Law, when opposed to them, must be disregarded.

The great case of *York Buildings' Company v. Mackenzie*, decided by the House in 1795, under the advice of Lord Thurlow and Lord Loughborough, commented on and expounded.

Remarks of Lord Brougham as to the inconvenience occasioned in England, by the severance of legal and equitable jurisdiction.

His lordship's regret that the English are still without the doctrine of "*bond fide consumptio et perceptio*." *Aberdeen Railway Company v. Blaikie*, 1 Macq. 461.

#### UNIVERSITY OF EDINBURGH.

*Supremacy of town council.—Power to regulate the studies for degrees.*—The university or college of Edinburgh stands on an entirely different footing from that of the other collegiate institutions of Scotland. It is not an independent establishment, but is subject to the superintendence and dominion of the Town Council of Edinburgh.

It is, in fact, the college of the town; and the town council have the government of it.

Hence the town council can regulate the character, course, and limits of study in the college, and they can rescind at their pleasure any rules or orders made by the *Senatus Academicus*.

In particular, the town council have the power of determining the qualification for degrees. And they may even declare that extramural teaching by qualified instructors shall, as part of the curriculum, be equivalent to collegiate instruction under the professors.

*Semble*, therefore, that although the learned body can alone grant the degree, it is the civic body that must fix the required qualification. *University of Edinburgh v. Lord Provost, &c., of Edinburgh*, 1 Macq. 485.

#### VERDICT.

*Amendment of entry of.*—A Judge may amend the entry of a verdict from memory, although he have no note either of the evidence or of his summing up to the jury. *Mariani v. Cairns*, 1 Macq. 766.

#### WAY, RIGHT OF.

1. *Terminus.—Leading to public place.*—*Semble*, in general, a public right of way means a right to the public of passing from one public place to another public place. And, in this respect, the laws of England and Scotland appear to be substantially the same.

*Semble*, that the terminus of a public right of way need not itself be a public place, if it lead to a public place. *Campbell v. Lang*, 1 Macq. 451.

2. *Whether it may be private.—Presumption of enjoyment.—Effect of non-user.*—Although a public way may pass through private property, it must have at each end a public terminus.

The terminus of a public way may be sufficient, although it have not, in the ordinary sense, an *exit*. It may be a *cul-de-sac*.

But a mere private place, not admitting of a passage through or beyond it, cannot form the terminus of a public way.

Upon evidence satisfactory and uncontradicted, showing a public right of way as far back as the memory of living witnesses can be expected to extend, the jury may presume a previous enjoyment corresponding with that evidence.

Non-user or obstruction of a public right of way may be evidence for the jury that the right of way does not exist,—but whether it can be evidence to show that the right has been lost, *quære*? *Young v. Cuthbertson*, 1 Macq. 455.

#### "YOUNGER CHILDREN."

*Deed of entail.—Power or faculty.*—The word "younger" applied to classes of children in a settlement, is construed to mean posterior, or lower, in point of limitation. Thus, where there is a provision for younger children, daughters will be included, though older than the son taking the estate.

By the expression "younger children" is in fact meant the unprovided for branches of a family.

A deed of entail contained a power to make provision for younger children other than the child who should take the estate; but one of the tenants in tail had only a life interest given to him by the entail—the estate, on his death, passing away from his children to another set of heirs:—*Held*, that *elder* and *younger* were correlative terms; and that, as none of his children could take the estate, so none of them could be objects of the power.

*Semble*, that the Aberdeen Act, 5 Geo. 4, c. 87, could not be applied to such a case; for the power conferred by it to make provision for younger children implies that the *elder* takes the estate. *Dickson v. Dickson*, 1 Macq. 729.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—"Still attorneyed at your service."—*Shakespeare.*

SATURDAY, APRIL 28, 1855.

### THE EXECUTOR AND TRUSTEE JOINT-STOCK PROJECT.

#### ITS UNSUCCESSFUL PROGRESS.

WE some time ago had occasion to notice several objections to the system of private legislation for personal purposes, apart from, or in opposition to, the general interest of the community. It may be right and just that a certain number of persons subscribing a given sum, in certain proportions, may be permitted to embark in an enterprise for their joint advantage; and that the Crown or the Legislature may authorise the association to *sue* and be *sued* in the corporate name. In this way, there may be, amongst the several members, a liability limited to the extent of the capital subscribed by each, and the joint-stock be alone responsible for the contracts into which the association may enter. So far the powers of Incorporation may be useful.

But it is a very different thing to alter the law of the land for the advantage, not even of a *class* of joint-stock companies established on certain well considered principles, but to confer powers on some *individual* company which are withheld from the rest of the public.

It seems, in the history of private Legislation, if an ingenious projector can associate with himself an able solicitor, and jointly can induce a sufficient number of respectable persons to act as Committee-men, Directors, or "Executive Counsel," it is not difficult,—such is the taste for speculation,—to attract or decoy a considerable number of the credulous public to subscribe for shares, especially when the first call is of small amount.

Applying this brief notice of joint-stock  
VOL. XLIX. No. 1,416.

projects to the scheme which bears the name of "The Executor and Trustee Company," we find from statements, to which we have recently had access, that it was proposed to raise a large capital in shares of 20*l.* each, amounting to a million of money, the preliminary deposit, on which was to be only *two shillings* per share. Supposing all the 50,000 shares to be taken, the 2*s.* deposit would have amounted to 5,000*l.*,—no large sum to start a great company, under the trusteeship or management of Noblemen, Barons, Members of Parliament, Queen's Counsel, Barristers-at-Law, and Attorneys-at-Law!

Instead, however, of a subscription for 50,000 shares, it appears that so late as March last, only 12,368 have been taken, and the sum received in lieu of 5,000*l.* is only 1,236*l.* 16*s.*

The advertisements, rent of offices and furniture, and of the general and parliamentary expenses, amount to 1,710*l.* 12*s.* 7*d.*, and there was consequently a deficiency of 473*l.* 16*s.* 7*d.* The original and the new directors have generously advanced a sum beyond the payment on their shares, and, with a small additional sale of shares, the sum of 1,000*l.* has been raised to meet the above deficiency of 473*l.* odd, and to "carry on the concern" in the present Session.

The items of the account are thus stated in arithmetical order:—

| Receipts.                                       |   | £     | s. | d. |
|---|---|-------|----|----|
| 1854.   |   |       |    |    |
| 12,368 shares at 2 <i>s.</i> per share          | . | 1,236 | 16 | 0  |
| Excess of expenditure beyond receipts on shares | . | 473   | 16 | 7  |
|   |   | <hr/> |    |    |
|   |   | £1710 | 12 | 7  |

D D

|  | £      | s. | d. |
|--|--------|----|----|
| 1855.  |        |    |    |
| Advances made by 22 original directors, beyond the payment on their shares . . . . . | 715    | 0  | 0  |
| Payment on 100 additional shares at 2s. per share . . . . .                          | 10     | 0  | 0  |
| Subscriptions by new directors, about . . . . .                                      | 275    | 0  | 0  |
|  | £1,000 | 0  | 0  |

*Disbursements.*

|  |        |    |   |
|--|--------|----|---|
| 1854.  |        |    |   |
| Advertisements . . . . .                     | 409    | 15 | 0 |
| Rent . . . . .                               | 87     | 10 | 0 |
| Office furniture . . . . .                   | 35     | 12 | 6 |
| Establishment and general expenses . . . . . | 427    | 15 | 1 |
| Parliamentary expenses . . . . .             | 750    | 0  | 0 |
|  | £1,710 | 12 | 7 |

|  |        |    |   |
|--|--------|----|---|
| 1855.  |        |    |   |
| Balance against the company on 1st Jan. 1855 . . . . . | 473    | 16 | 7 |
| Surplus arising from the directors' advances . . . . . | 526    | 3  | 5 |
|  | £1,000 | 0  | 0 |

We understand, it is stated by the Executive Council that, in accordance with the provisions of the Joint-Stock Companies' Act, no further deposit will be required, in the first instance, than 2s. per share. The projectors anticipate that, after the passing of the Act, a call of 2l. per share will then be made; and they assure the shareholders that future instalments will be regulated by the increase of business, by the advancing prosperity of the society, and the necessity of a corresponding increase of the guarantee fund.

It is intimated that a small charge only will be made upon the property administered by the company, as a remuneration for the security it affords. One per cent, it is calculated, will be amply sufficient for this purpose!

We are rather flatteringly told that the capital paid up, with the exception of the deposit of 2s. per share for preliminary expenses, will, in order to form a guarantee fund, be immediately invested in consols, and the shareholders will, from the commencement, receive dividends on the sums so invested, in addition to their share of the *profits* arising from the business transacted by the society.

Then comes an estimate of a large sum as the result of the successful establishment of the company. We are told as the basis of the calculation, that in 1851, legacy duty in the United Kingdom was paid on

49,402,391l. of personal estate only. The Succession Duties' Act, it is sanguinely computed, will greatly augment the sums liable to such payments. And then it is modestly concluded, that if "one-fortieth of this amount of personal estate should pass through the hands of the society, and a similar amount in trusteeships under settlements and deeds, and one per cent. were charged by the Society, an annual sum of 25,000l. would be produced."

Adding to this moderate reckoning the dividends on the paid-up capital (and deducting the expenses of the establishment), we are assured "there would remain more than sufficient to give a dividend of *ten* per cent. to the shareholders, on a paid-up capital of 250,000l." Is it not marvellous, after this statement, that only 12,000 shares out of 50,000, at the small call of 2s. per share, should have been subscribed for; but so it is.

The directors, or executive council, state that—

"It will be seen, on applying to the abstract of accounts, that a balance of about 526l. 3s. 5d. still remains nominally to the credit of the company. This balance is derived from extra sums contributed by the directors; and the council consider that it will, in all probability, afford sufficient funds to meet the necessary expenses. They, however, wish it to be clearly understood, that they have no claim upon the shareholders, until the Act of Incorporation shall be obtained."

The executive council ascribe the rejection of their Bill last Session, in some measure, to the unfavourable effect which the South Sea Company's Bill had upon that of the Executor and Trustee Company, and they state that—

"The aim of the South Sea Company's Bill was to terminate the affairs of that company, so far as regarded its original purpose: but still to maintain its existence, and divert its capital to a new object, namely, the undertaking of trusts; to which many of the shareholders had the greatest objection. The South Sea Company having now ceased to exist; the Executor and Trustee Company's Bill will in future rest entirely upon its own merits."

This, we think, is very ungenerous and ungrateful treatment of the South Sea Company, who valiantly joined in the conflict last year, and certainly enabled the promoters of the scheme to make a more formidable appeal to Parliament than can now be presented.

The sanction, to a certain extent, given to the principle of the Bill by some members of the then Government, may be ascribed

to the facilities afforded by the South Sea Company in the financial arrangements of the year; and it is certainly not a little ungracious that the Executor and Trustee Company then coming under the shelter of the South Sea Company should now repudiate them.

We are informed that the executive council have been unwilling to abandon the undertaking without a further effort. They, however, acknowledge the secession of some of their members, who think that the application to Parliament should be indefinitely postponed; but the majority of (though not all) the directors are of opinion, that the abandonment of the undertaking *now* would be a waste of the money which has been already expended, and would throw into the hands of others the reward they anticipate as justly due to the projectors of the plan; and, therefore, it appears they are determined to try one more experiment. As they have advanced 1,000*l.* from their own funds, they may claim the privilege of continuing the agitation; but it must be admitted that the circumstances which we have thus extracted from the prospectus and report issued by the promoters themselves, amply prove the inexpediency and impropriety of this mode of private legislation, whereby it is attempted to alter the general law for the profit and advantage of a trading company.

## TESTAMENTARY JURISDICTION BILL.

### JURISDICTION OF THE COURT AND COURSE OF PROCEEDING AND PRACTICE.

HAVING set forth the clauses relating to the Judges, registrars, and other officers, and the provisions affecting the practitioners of the Court, we proceed now to lay before our readers the proposed enactments relating to the Jurisdiction and Practice of the Court.

Except where otherwise provided, the Act will commence on the 1st January, 1856, or such other day as her Majesty by order of Council may appoint; s. 1.

Interpretation clause; s. 2.

#### *Constitution of the Court.*

The jurisdiction and authority of all ecclesiastical, royal peculiar, peculiar, manorial, and other Courts and persons in England and Wales, now having jurisdiction, power, or authority to grant or revoke probates of wills or letters of administration of the effects of deceased persons, shall absolutely cease and determine, and no jurisdiction or authority in relation to legacies, inventories, and accounts,

or the distribution of the estates and effects of deceased persons, or any testamentary cause or matter, or any matter arising out of or connected with the grant of administration, shall belong to or be exercised by any such Court or person as aforesaid; s. 3.

All jurisdiction, power, and authority in relation to the granting probate of wills and letters of administration of the effects of deceased persons now vested in or which might be exercised by any Court or person in England or Wales, together with complete jurisdiction for the purpose of determining all questions and matters relating to matters testamentary, shall belong to and be vested in her Majesty, and shall be exercised in the name of her Majesty in a Court to be called "The Testamentary Court;" s. 4.

The Testamentary Court shall, for the purpose of exercising the jurisdiction, power, and authority hereby vested in the same Court, have all the jurisdiction, power, and authority of the High Court of Chancery by Statute or otherwise now exercisable by the Court of Chancery with respect to matters within its jurisdiction, and also all powers and authorities by Statute or otherwise now exercisable by the Prerogative Court or any other Court, or body politic or corporate, or any person whomsoever, exercising or entitled to exercise jurisdiction in relation to matters testamentary; s. 5.

The practice and proceedings in the Court, except where otherwise directed by this Act, or by any general order of the Lord Chancellor, in pursuance of the provisions of this Act, shall be similar to the practice and proceedings of the Court of Chancery; s. 6.

The Court shall hold its sittings at such place or places in London or Middlesex, or elsewhere as her Majesty in Council shall from time to time appoint; s. 7.

The Lord Chancellor shall direct a proper seal or proper seals to be made for the Court, and it shall be lawful for him to direct the same to be broken, altered, and renewed, at his discretion; s. 17.

The principal office of the Court, to be called the Testamentary Office, shall be established in such place as her Majesty in Council shall from time to time appoint; and, until another Testamentary Office shall be appointed by her Majesty in Council, the present public registry of the Prerogative Court shall be used as the Testamentary Office; s. 18.

Every order of the Court, when drawn up by the registrar, shall be entered by the registrar in a proper book to be provided for that purpose, and such registrar shall furnish to every person requiring the same office copies of such orders or of such part thereof as may be required, which copies shall be signed by one of such registrars, and sealed or stamped with the seal of the Court; and every such office copy, purporting to be signed, and sealed or stamped with such seal, shall at all times, and on behalf of all persons, and whether for the purposes of this Act or otherwise, be ad-

mitted as evidence of the order of which it purports to be a copy, without any further proof; s. 32.

When any order of the Court relates to the payment, transfer, or carrying over of any cash, stock, funds, annuities, securities, or other effects, to or into the name of the Accountant-General of the Court of Chancery, to the credit of any cause or matter depending in the Testamentary Court, or other payment, transfer, or carrying over, or other disposal by the said Accountant-General of any cash, stock, funds, annuities, securities, or other effects which may be standing in his name to the credit of any cause or matter depending in the Testamentary Court, the said Accountant-General, and all other persons, including the Governor and Company of the Bank of England, and all other companies and societies, shall act upon such order in the same manner as if such order had been an order of the Court of Chancery duly drawn up, passed, and entered, and one of the registrars of the Testamentary Court shall certify under his hand to the said Accountant-General what stocks or funds he is by virtue of any such order to transfer, and to whom, in the same manner as the registrars in the Court of Chancery have been accustomed to do; s. 34.

All orders or decrees of the Court shall be liable to be reversed, altered, or varied on appeal by the Lord Chancellor or Court of Appeal in Chancery; and an appeal shall lie to the House of Lords from orders or decrees of the Court, and from orders or decrees made on appeal by the Lord Chancellor, or the Court of Appeal in Chancery, in like manner as from orders or decrees of the Court of Chancery; s. 35.

#### *Proceedings to obtain Probate or Administration.*

Any person desirous of proving any will or obtaining letters of administration to the effects of any deceased person is, either personally or through a solicitor, to apply for the same at the Testamentary Office of the Court, and leave or cause to be left in such office, the will, if any, of the deceased (unless the same shall have been previously deposited in the Court or the registries thereof, or shall for any other reason be not required to be left), and also a copy of the will, if any, and an affidavit made by the person or some one of the persons applying for such probate or administration, with a schedule thereto, in a form similar to the form set forth in the Schedule A. to this Act, with such variations as the nature and circumstances of the case may require, and such other papers as may be necessary for the purpose of obtaining such probate or administration; s. 36.

Where the person applying for such probate or administration shall be resident out of the limits of the London district post, such application, together with the documents necessary for the purpose of obtaining such probate or administration, may be addressed and sent

through the General Post Office to the principal registrar; s. 37.

The principal registrar shall cause printed forms to be prepared and circulated, containing directions to Commissioners for taking oaths in the Court as to the inquiries they are to make of persons applying for probate or administration, and printed forms of affidavits, applicable as far as circumstances will permit to the different cases likely to arise, in order that such printed forms of affidavit may be filled up and signed, and sworn to by the applicant; s. 38.

If and when the principal registrar shall be satisfied upon any such application as aforesaid, whether made directly at the Testamentary Office or sent to him through the General Post Office, that the same ought to be granted, he shall signify such satisfaction to the person making such application, and subject to such regulations as may be made by the Lord Chancellor as to the mode of payment of the stamp duty payable by law on such probate or administration, and the fees payable thereon, shall cause such probate or administration to be granted accordingly, and to be delivered or transmitted through the General Post Office to the person making such application as aforesaid or his solicitor; s. 39.

Probate and administration may be granted in the form or to the effect set forth in Schedule B. to this Act, with such variations as the nature and circumstances of the case may require; s. 40.

Probate copies of wills and letters of administration, with or without the will annexed, as the case may be, shall be printed under the direction of the principal registrar, who shall cause the seal of the Court to be affixed to any one or more of the printed copies which may be required by the person proving the will or taking out the letters of administration; s. 41.

The principal registrar shall, within such time after the grant of probate or administration as the Lord Chancellor shall by any general order direct, cause a printed copy thereof to be transmitted through the post to each of the following offices or places; that is to say,

1. The Metropolitan Register Office of Births and Deaths in London;
2. The Office of her Majesty's Prerogative in Dublin;
3. The Office of the Commissary of the County of Midlothian in Edinburgh;
4. The Office of the Registrar of Births and Deaths in the district within which the deceased died, in all cases where the place of his death shall be known to have been within any such district;
5. Such other offices or places, if any, as the Lord Chancellor shall from time to time direct; s. 42.

Any printed copy of a will, probate, or administration to be so transmitted as aforesaid may be inspected by any person, on payment of a fee of 6d.; s. 43.

The principal registrar shall also retain in the Testamentary Office so many printed copies

of the will or administration as he shall think necessary, for inspection and sale, having regard to the nature of the instrument, the amount of the property, and the probable demand for copies thereof; s. 44.

Official printed copies of wills or administrations to be proved or granted after this Act shall come into operation shall, so long as any copies retained for sale shall be undisposed of, be issued to any person applying for the same, on payment of such fee as shall be fixed for the same by any order of the Lord Chancellor, to be made as hereinafter-mentioned; s. 45.

Every printed copy issued by the principal registrar shall be stamped in such manner as to denote the amount of *ad valorem* duty which has been paid in respect of such probate or letters of administration; s. 46.

Notwithstanding the provisions hereinbefore contained an official written copy of any part or portion of a will, or of the whole thereof, may be obtained from the Testamentary Office, on payment of such fee as shall be fixed for the same by any order of the Lord Chancellor to be made as hereinafter-mentioned; s. 47.

The principal registrar shall also, within such time after the grant of any probate or administration as shall be appointed by the Lord Chancellor, cause a note of such probate or administration, containing the particulars mentioned in Schedule (A.) to this Act, to be advertised in the *London Gazette*; s. 48.

#### *Inventory and Effects.*

Every executor or administrator shall, within 12 calendar months after the grant of probate or administration to him shall have been made, file in the Testamentary Office an inventory of the estate and effects of the deceased for or in respect of which the probate or administration shall have been granted, in such form, containing such particulars, and accompanied by an affidavit in such form or to such effect, as the Lord Chancellor shall by general order direct; s. 49.

If any executor or administrator shall neglect to file such inventory and affidavit as aforesaid within the aforesaid period of 12 calendar months, or within such further time as shall be allowed by the Court for the purpose, it shall be lawful for any person interested in the estate of the deceased to apply in a summary manner to the Court; and upon such application it shall be lawful for such Court to order that such inventory and affidavit shall be filed within such time as the Court shall think fit, and to award such costs against the executor or administrator, either personally or out of the estate, as it shall think right; and every such order may be enforced in like manner as other orders of the Court; s. 50.

#### *Caveats and Citations or Summons.*

Caveats against the grant of probates of wills or of administrations may be lodged in the Testamentary Office in like manner, as near as may be, as caveats are now lodged in the Prerogative Court, and the practice and proceedings under such caveats shall, as near as may

be, correspond with and be similar to the practice and proceedings under caveats now in use in the Prerogative Court; s. 51.

Commissioners for taking oaths in the Court shall be bound to receive, and to transmit through the post to the principal registrar, caveats against the grant of probates of wills and administrations on receipt of such fee for the same as shall be fixed by the general order of the Lord Chancellor, and the principal registrar shall cause to be prepared and issued printed forms of such caveats; s. 52.

In lieu of a citation or other process now issuable from the Prerogative Court, calling upon executors or other persons to accept or refuse probate or administration, or to show cause why it should not be granted to the person suing out the process, a summons shall be issuable from the Testamentary Office, returnable before the Judge of the Court, and the practice thereunder shall, as near as may be, and except so far as the same may be altered by any general order of the Lord Chancellor in pursuance of the provisions of this Act, correspond with and be similar to the practice now in use in the Prerogative Court with respect to such citations or other processes as aforesaid; s. 53.

#### *Suit to establish Wills.*

Any person having an interest in and being desirous of establishing any will of the real estate of any deceased person, or of recalling or revoking any probate or administration which may have been granted through the Testamentary Office, may institute a suit in the Court for the purpose, either by bill or claim, as he may be advised; s. 54.

It shall not be competent to a defendant in any such suit to demur to the bill for want of parties thereto, or to require as of right that the suit, whether commenced by bill or claim, should not proceed without having other persons made parties thereto than the actual defendant or defendants thereto, but in every such case it shall be discretionary with the Court to proceed with such suit, and to determine the questions arising therein, on being satisfied that there are before the Court in the suit, either actually or by representation, parties having such an interest in the questions to be determined as that in the judgment of the Court the same may safely be decided without requiring any other person or persons to be made a party or parties thereto; s. 55.

The determination of the Court in any such suit, if the Court shall think fit so to declare by its decree or order therein, shall bind all persons named or referred therein by a particular or general description, including persons under disability, whether parties to the suit or not, and persons unborn; s. 56.

Any person named or referred to by any such decree or order as last aforesaid, and purporting to be bound thereby, though not a party to the suit, may have such relief, if any, against the same, by way of re-hearing or appeal, or otherwise, as he would have been en-



titled to in case he had been originally made a party thereto; s. 57.

#### *Administration Bonds.*

So much of an Act passed in the 21 Hen. 8, c. 5, and of an Act passed in the 22 & 23 Chas. 2, c. 10, and of an Act passed in the 1 Jac. 2, c. 17, as requires any surety, bond, or other security to be taken from a person to whom administration shall be committed, shall be and the same are hereby repealed; s. 58.

Every person to whom any grant of administration shall be committed shall give bond to the Judge of the Court for the time being, and if the Court shall so require with one or more surety or sureties, conditioned for duly collecting, getting in, and administering the personal estate of the deceased, which bond shall be in such form as the Lord Chancellor shall from time to time by any general order direct; s. 59.

Such bond shall be in a penalty of double the amount under which the estate and effects of the deceased shall be sworn, unless the Court shall in any case think fit to direct the same to be reduced, in which case it shall be lawful for the Court so to do, and also to direct that more bonds than one shall be given, so as to limit the liability of any surety or sureties to such amount as the Court shall think reasonable; s. 60.

The Court may, on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, order any one of the registrars of the Court to assign the same to some person, to be named in such order as the party to sue in respect of any breach of the condition thereof; and such person shall thereupon be entitled to sue on the said bond, in his own name, both at law and in equity, as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for all persons interested (subject nevertheless to the control and direction of the Court) the full amount recoverable in respect of any breach of the condition of the said bond; s. 61.

#### *Pending suits.*

All suits, whether original or by way of appeal, which shall be depending in any Court in England or Wales, respecting the grant of probate of any will or administration of the effects of any deceased person, shall be transferred, with all the proceedings therein, to the Court, there to be dealt with and decided according to the rules and practice of the Court, except so far as the Court may think it expedient to adopt, for the purposes of such transferred suits or any of them, the rules or practice of the Court in which the same shall have been pending, to which end the Court shall, for the purposes of such suits, be deemed and taken to have all the powers and jurisdiction to all intents and purposes possessed by the Court from which such suit shall be transferred: Provided always, that this enactment shall not apply to proceedings by way of appeal pending before her Majesty in Council, which proceedings

shall be carried on and prosecuted in the same manner in all respects as if this Act had not passed: Provided also, that every person, who if this Act had not passed might have appealed to her Majesty in Council against any proceeding, decree, or sentence of any Court respecting the grant of any probate or administration, may, notwithstanding the provisions of this Act, appeal to her Majesty in Council against such proceeding, decree, or sentence: Provided also, that her Majesty in Council may remit to the Court any cause or proceeding pending by way of appeal as aforesaid, or to be brought before her Majesty in Council upon appeal as aforesaid, with such directions as the justice of the case may require; s. 62.

If at the time when this Act shall come into operation any cause or matter which shall have been heard before the Judge of the Prerogative Court shall be standing for judgment, it shall be lawful for such Judge, at any time within six weeks after this Act shall have come into operation, to give in to one of the registrars of the Court a written judgment therein, signed by him, and a decree or order, as the case may require, shall be drawn up in pursuance of such judgment; and every such decree or order shall have the same force and effect as if it had been drawn up in pursuance of a judgment of the Court on the day on which the same shall be delivered to the registrar, and shall be in like manner subject to appeal; s. 63.

#### *Administrator and Receiver.*

Where a person has died or shall die wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, and it shall appear to the Court to be necessary and convenient in any such case to appoint some person to be the administrator of the personal estate of the deceased, other than the person who, if this Act had not passed, would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the Court to grant administration of the personal estate of such deceased person to the person who, if this Act had not passed, would by law have been entitled to a grant thereof, but it shall be lawful for the Court, in its discretion, to appoint such person as the Court shall think fit to be such administrator, upon his giving such security (if any) as the Court shall direct, and if in the judgment of the Court, under the special circumstances of any particular case, it shall be proper or advisable so to do, to appoint as such administrator a person to be under the immediate control of and immediately accountable to the Court, and to allow to such person such remuneration out of the estate as the Court shall think fit; c. 64.

It shall be lawful for the Court to appoint an administrator of the personal estate of any deceased person pending any suit in the Court touching the validity of any will of such deceased person, or for the obtaining, recalling,

or revoking any probate of a will or any grant of letters of administration of his personal estate; and the administrator so appointed shall have all the rights and powers of general administrators, other than the right of distributing the residue of such personal estate after payment of the funeral expenses and debts of such deceased person, except so far as such rights and powers may be limited or restricted by any order of the Court; and every such administrator shall be subject to the immediate control of the Court, and act under its direction; s. 65.

It shall be lawful for the Court to appoint a receiver of the real estate of any deceased person pending any suit in the Court touching the validity of any will of such deceased person; s. 66.

It shall be lawful for the Court to direct that administrators and receivers appointed by the Court pending suits therein should receive out of the personal or real estate of the deceased (as the case may be) such reasonable remuneration as the Court shall think fit; s. 67.

After any administration shall have been granted by the Court of the personal estate of any deceased person, or any part thereof, no person shall have power to sue or prosecute any suit or otherwise act as executor of the deceased as to the estate comprised in or affected by such grant of administration until the same grant shall have been by act of the Court revoked or declared to have been determined; s. 68.

The revocation or determination by Act of the Court of any temporary administration granted by the Court shall in nowise prejudice any proceedings at Law or in Equity which may have been commenced by or against any administrator so appointed; but a suggestion may be made upon the record, of the revocation or determination of such administration, and of the grant of probate or administration which shall have been made consequent upon such revocation or determination; and the proceedings which shall have been commenced by or against the administrator whose administration shall have been so revoked or determined shall be continued in the name of the executor or administrator constituted or appointed in his place, in like manner in all respects, with reference to liability to costs and otherwise, as if the proceeding had been originally commenced by or against the executor or administrator so last established or appointed; s. 69.

#### *Power over Wills, &c.*

The Court shall have the same or the like power and control over all wills and testamentary instruments, and over all papers or writings purporting to be testamentary, as the Prerogative Court now has or can exercise with respect to matters within the jurisdiction of the same Court; s. 70.

The Court shall have jurisdiction to order the removal from the registry or the cancellation of any will which may be shown to the satis-

faction of the Court to have been forged, or the cancellation or restoration of any part of a will which may be shown to have been forged, altered or tampered with; s. 71.

It shall be lawful for the Court, on motion, petition, or otherwise, in a summary way, whether any suit shall be depending in the Court with respect to any probate or administration or not, to order any person to produce and bring in to the Testamentary Office of the Court, or otherwise as the Court may direct, any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it shall not be shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for concluding that he has the knowledge of any such paper or writing, it shall be lawful for the Court to direct such person to be examined upon interrogatories respecting the same, and such person shall be bound to answer such interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not answering such interrogatories, or not producing or bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit in the Court, and made such default as aforesaid; and the costs of all such proceedings and of such production as aforesaid shall be in the discretion of the Court; s. 72.

It shall be lawful for but not obligatory upon the Court to direct the validity of any will, whether affecting real estate or personal estate, or both real estate and personal estate, to be tried at law by a jury; s. 73.

In any suit in the Court touching the validity of any will, whether affecting real estate or personal estate, or both real and personal estate, it shall be lawful for any party interested to require that the subscribing witnesses to such will, if living, and within the jurisdiction of the Court of Chancery, shall be produced and examined in open Court: Provided, that the Court shall have power to dispense with the production and examination of such subscribing witnesses in cases in which it shall deem it expedient so to do, and that the costs attending such production and examination shall in all cases be in the discretion of the Court; s. 74.

#### *Appointment of real Representative.*

It shall be lawful for any person interested in the real estate of any deceased person, whether such person shall have died before or after the passing of this Act, to apply to the Court in any suit, or upon motion or petition, in a summary manner, without bill or claim filed, to appoint some person to be the representative of the real estate of such deceased person or any part thereof; and the Court, if it shall think fit, shall, upon notice of such application to such persons, if any, as it shall think fit, have power to make such appointment as to such

real estate only of the deceased as may not be vested in trustees or trustee in trust for sale, with power to give discharges to purchasers, or over which there shall not be a power of sale exercisable by any trustee or trustees or other person or persons, with a like power of giving discharges to purchasers, or any part of such real estate; s. 75.

Every real representative so to be appointed shall have full power to sell and convey the real estate of the deceased, or so much thereof as shall be comprised in or affected by the order appointing such real representative, and to receive the rents and profits thereof, and to raise money by mortgage of the same, and to give discharges for such purchase and mortgage moneys, and rents and profits, and shall apply the money to be received by him for the purposes and in the manner in such order to be expressed, but no purchaser or mortgagee shall be in any manner bound to see to such application; s. 76.

In all suits respecting the real estate comprised in or affected by any order appointing a real representative, the real representative so appointed shall represent such real estate in the same manner and to the same extent as the executor or administrator of any deceased person represents the personal estate of such deceased person: s. 77.

Except where otherwise provided, none of the provisions herein contained with reference to the real estate of deceased persons shall extend to the real estate of persons dying before this Act comes into operation; s. 78.

#### *Limitation, Disability, &c.*

Except as hereinafter provided, no suit or proceeding shall be instituted or taken to revoke or recal any probate of a will or grant of administration, after the expiration of 20 years from the date of such probate or administration; s. 79.

If, at the time of the granting any probate or administration with respect to the estate of any deceased person, the person or some or one of the persons entitled to revoke or recal such probate or administration shall have been or shall be under the disability of infancy, coverture, idiotcy, lunacy, unsoundness of mind, or absence beyond seas, then and in such case such person so under disability, or any person claiming under him, may institute or take any suit or proceeding for the purpose of revoking or recalling any probate or administration of his estate within 10 years after the removal of such disability, or after the death of the person under disability, which shall have first happened; s. 80.

#### *Fraud.*

In cases of fraud, it shall be lawful for the person aggrieved or supposed to be aggrieved thereby, or any person claiming under him, to institute a suit or proceeding for the purpose of revoking or recalling probate of a will or grant of administration, notwithstanding the expiration of the limited period hereinbefore fixed for the purpose, provided the special leave

of the Court be previously obtained authorising the institution of such suit or proceeding, such leave to be applied for by petition or motion, in a summary way, and upon notice to such persons, if any, as the Court shall think fit, and to be granted upon such terms, if any, as the Court may think fit to impose; s. 81.

All probates and administrations granted before the time appointed for the commencement of this Act, which may be void or voidable by reason only that the Courts from which respectively the same were obtained had not jurisdiction to grant such probates of will or administration, shall be and be deemed for all purposes whatsoever to be and to have been as void as if the same had been obtained from the Courts entitled to grant such probates and administrations respectively: Provided always, that any void or voidable probate or administration shall not be made valid by this Act when another probate of the same will or other letters of administration of the same personal estate shall subsequently, but before the time appointed for the commencement of this Act, have been granted out of the proper Court nor when such probate or administration shall have been revoked, or determined by any Court of competent jurisdiction to have been void, before that time; nor so far as the same respects any personal estate which at the time of the passing of this Act shall be in the possession of any person who would not have been entitled thereto if the same probate or administration were valid; nor shall this Act prejudice or affect any proceedings pending at the time of the passing of this Act in which the validity of any such probate or administration shall be in question between the persons claiming under the same and the person claiming adversely thereto, and such probate or administration, if the result of such proceeding shall be to invalidate the same, shall not be rendered valid by this Act; and if such proceedings shall abate or become defective by reason of the death of any party, any person who but for this Act would have any right by reason of the inability of any such probate or administration shall retain such right, so that he may commence such proceedings for enforcing the same within six calendar months after the death of such party: s. 82.

[To be continued.]

## LAW OF ATTORNEYS AND SOLICITORS.

### TAXATION AFTER PAYMENT.

It appeared that the petitioner, Mrs. Smith, had employed Mr. Abbott in several matters, and ultimately to raise the sum of 4,000*l.* on mortgage. At the meeting to execute the mortgage, the mortgagee's solicitor said his bill must be paid, and inquired how the cheques were to be drawn, when Mr. Abbott directed them to be

drawn for 295*l.* 1*s.*, 2,443*l.* 7*s.* 9*d.*, and 1,261*l.* 11*s.* 3*d.*, and Mrs. Smith, at the request of the mortgagee's solicitor, wrote her name on each, observing in jest she would take them away with her. Her solicitor then gave the cheque for the 295*l.* 1*s.* to the mortgagee's solicitor in payment of his costs, and retained the one for 2,443*l.* 7*s.* 9*d.* for his own costs against her in respect of the various matters in which he had acted professionally, and he delivered the other cheque to Mrs. Smith together with a sealed packet which he told her to look at at her leisure, as perhaps it would amuse her. Mrs. Smith did not then examine the packet, but some days afterwards she did so, and found it contained Mr. Abbott's bills of costs, and she presented this petition within 12 months for a special order to tax on the ground of unreasonable and extravagant charges.

The *Master of the Rolls* said :—

"I think that the facts appearing in this case (assuming that there are items sufficiently objectionable in the bill, of which I have heard nothing, and which is an important point) do not prevent the petitioner from being entitled to an order for taxation of this bill. Upon this application, it is immaterial whether the petitioner intended to pay the bill, if the Court should be of opinion that the circumstances are such as would entitle her to tax the bill, assuming it to have been actually paid.

"I concur in the observation, that the probability, nay the certainty of the case is, that Mr. Abbott would not have allowed this transaction to be completed, unless his bill, or a considerable part of it, had been paid. A sum of 4,000*l.* was raised by mortgage, and a large sum of money was due for costs to Mr. Abbott, who would not have allowed the transaction to be completed and the whole money to be paid to Mrs. Smith, without having some security for the payment of his bill.

"The transaction was this:—On the 12th of February, the mortgagee's solicitor, the solicitor of this lady, his clerk, and this lady, met. In this matter, in which she was opposed to her solicitor, this lady had neither assistance nor support, or anything whatever to point out to her the consequences of the acts she was doing. A sum of 4,000*l.* was to be paid by the mortgagee; his solicitor says, 'my bill, which amounts to 295*l.* 1*s.*, must be paid; in what manner are the cheques to be drawn?' Mrs. Smith looks at Mr. Abbott, as much as to say, 'as you know how they are to be drawn, inform him;' upon which Mr. Abbott tells the mortgagee's solicitor, and thereupon three cheques are drawn—2,443*l.* 7*s.* 9*d.* for the amount of the mortgage money to be paid off, and her solicitor's bills; 295*l.* 1*s.* the mortgagee's costs; and the balance of 1,261*l.* 11*s.* 3*d.*

was to be paid to the lady herself. Undoubtedly the cheques got into the possession of this lady, for she writes her name on them, and says, laughing, 'she will take them away;' but it is obvious that she would not have been allowed to leave the room with those cheques. She knew nothing whatever of the solicitor's bills, except that she was told their amount, and that she would find the details in a certain sealed-up paper, which was given to her. I admit that where a client intends to pay a bill of costs at the meeting to complete a matter, the mere fact of the bill being then delivered and paid, without any further opportunity of examining it, will not alone be sufficient to entitle the client to a taxation; but that such a circumstance forms a material consideration, is certain; for it has been said, and it is undoubtedly the law now, notwithstanding the changes which have taken place, that there must be no pressure, no undue influence, and the means of examining the bill which is delivered.

"In this case, undoubtedly, there were no means of examining the bill. She was there with her own solicitor, the person who benefited by the transaction, and his clerk, and was without the means of resisting. So that, though there may be no suspicion of any undue influence, there was the necessary influence which exists between a solicitor and his client, besides this species of pressure:—that it was certain that the transaction would come to nothing unless she consented to the payment.

"To say, in that state of things, when the matter is complained of within three months afterwards, and a petition presented within a year for the purpose of taxing the bill, this Court would refuse taxation, does appear to me contrary to the decided cases upon this subject, and contrary to the principle upon which I have acted.

"I will look at the affidavits with respect to the items of alleged overcharge; because undoubtedly the Court does require to have some such items established. In cases of doubt on that point, I usually take the advice and assistance of one of the Taxing Masters, who understand these matters infinitely better than the Court can do, and whose advice usually guides one in matters of disputed items."

The *Master of the Rolls* afterwards said :—

"The only remaining question was, whether the items of alleged overcharge were sufficient to warrant a taxation of the bill? and I am of opinion that they are. I shall not specify them, for as the matter will go to the Taxing Master, it would be better not to do so. There must be a taxation, and I shall reserve the costs."

*In re Abbott*, 18 Beav. 393.

## THE LAW OF DUELLING.

ILLUSTRATED FROM MR. WARREN'S  
MISCELLANIES.

FROM the highly interesting and admirable "Miscellanies, Critical, Imaginative, and Juridical," of Mr. Warren, Q. C., we extract the following graphic and eloquent narrative of a trial before Mr. Justice Bayley, in the year 1830:—

"We ourselves were present at a remarkable trial for duelling, 24 years ago,<sup>1</sup> at the Old Bailey, before the late excellent and very learned Justice Bayley, on which occasion he also laid down the rule of law respecting duelling, with uncompromising firmness and straightforwardness. This was the case of a militia officer, who had shot, in a duel in France, a young officer in the army; and a clergyman, the brother of the deceased, made strenuous and persevering efforts to bring the survivor to trial. The latter continued, for some time after the duel, in France; and possibly under the impression, then a natural one, that he could not be tried in this country for a duel fought in a foreign country not under the British crown, he came to England; where he was instantly arrested under Stat. 9 Geo. 4, c. 31, s. 7, which had been passed only two or three years previously, viz., in 1828, and might consequently well escape the notice of a non-professional person. That Act authorises the trial, in England, under a special Commission, issued under the Great Seal, of any British subject charged with having committed any murder or manslaughter abroad, whether within or without the British dominions, as if such crimes had been committed in England. The prisoner was admitted to bail, to meet the charge, and, having duly surrendered, took his place at the bar of the Old Bailey, at 9 o'clock on a Saturday morning.

"He was a man apparently approaching middle age, of gentlemanly appearance, his features indicating determination of character; but they wore an expression of manifest anxiety and apprehension as he entered the dock, and, looking down, beheld immediately beneath him, the brother of the man whom he had shot, and through whose ceaseless activity he was then placed on trial for his life as a murderer. He was to be tried, moreover, by an uncompromising Judge—stern and exact in administering the law, and animated by pure religious spirit, but, withal, thoroughly humane. Throughout the whole of that agitating day, the prisoner stood firm as a rock, sometimes his arms folded, at others his hands resting on the bar; while his eyes were fixed intently on the Judge, the witnesses, or the counsel; every now and then glancing with gloomy inquisitiveness at the jury and the Judge. His lips were from first to last firmly compressed. A considerable

number of witnesses was called for both the prosecution and the defence; who gave conflicting testimony as to the circumstances under which the parties had fired at each other. The unhappy deceased, a very young man, was shot through the neck, and died, shortly afterwards, on the ground. The prisoner's witnesses, who had seen the duel, denied that he had fired irregularly. As counsel were not at that time allowed to address the jury for the defence, the prisoner spoke himself at considerable length, alleging himself, and truly, to have been the challenged party, and denying that he had been guilty of any unfairness, or had entertained any ill-will towards the deceased. As the case stood, however, it looked black enough to those who knew the law, and the character of the Judge who sat to administer it. That venerable person began his summing-up to the jury about 7 o'clock in the evening, and the scene can never be effaced from our memory. The Court was extremely crowded; the lights burned brightly, exhibiting anxious faces in every direction: but what a striking figure was the central one—that of the prisoner! Immediately over his head was a mirror, so placed as to reflect his face and figure vividly, especially to the jury. A few moments after the Judge had commenced his charge, we observed the Ordinary of Newgate glide into Court, the late Rev. Dr. Cotton, in full canonicals, and with flowing white hair, having a picturesquely venerable and ominous appearance, and take his seat near to, but a little behind, the Judge. It was then usual<sup>2</sup> for the Ordinary to be present at the close of capital cases, in order to add a solemn 'amen' to the prayer with which the sentence of death concluded—that 'God would have mercy on the soul' of the condemned. 'Gentlemen of the jury,' commenced Mr. Justice Bayley, amidst profound silence, 'we have heard several times during the course of this trial, of the law of honour; but I will now tell you what is the law of the land, which is all that you and I have to do with. It is this: that if two persons go out with deadly weapons, intending to use them against each other, and do use them, and death ensue, that is—murder, wilful murder.' He paused for a moment, as if to give the jury time to appreciate the dread significance of his opening. As soon as he had uttered the last two words, the prisoner's cheek was instantaneously blanched. We were eyeing him intently at the moment, and shall never forget it. He stood, however, with rigid erectness, gazing apparently with mingled anger and fear at the Judge, whom he felt to be uttering his death warrant; and after a while bent his eyes on the jury, from whom they wandered scarce a moment during that momentous summing-up—one which, with every word, was letting fall around him, as he must have felt, the curtain of death. 'The law of honour,' said the Judge, towards the close of his charge, 'is an imposture—a wicked imposture, when set against the law of the

<sup>1</sup> On Saturday, the 9th October, 1830.

<sup>2</sup> Such is believed to be still the case."

land, and the law of God Almighty, claiming the right to take away human life. I tell you, who sit there to discharge a sworn duty, that a fatal duel is malicious homicide—and *that is wilful murder.*' The jury retired to consider their verdict; and the Judge at the same time quitted the Court till his presence should be required again. The prisoner, however, continued standing at the bar almost motionless as a statue. After a considerable absence the jury returned into Court. The prisoner eyed them, as one by one they re-entered their box, with a solicitude dismal to behold, and the irrepressible quivering of his upper lip indicated mortal agitation. The verdict, however, was—Not Guilty; on which the prisoner heaved a heavy sigh, passing his hand slowly over his damp forehead, bowed slightly, but rather sternly to the jury, and was then removed from the bar, and released from custody."

The learned Counsel's notes on the law of the case are as follow:—

"Owing to the length of time which had elapsed since this case was tried, nearly a quarter of a century, the author, trusting solely to memory, erroneously stated certain incidents to have been supposed to attend the duel, which led the survivor to challenge the correctness of the statements in a Court of Law. At the suggestion of the Court, who stated that the article in question was evidently written with a high moral object, and that there was no pretence for imputing more than *bond fide* mistake, the matter at once terminated by an ample apology.

"The decision of the Court on that occasion, and the interesting and important point of law submitted to it, has been much canvassed; and, it is said, has been disapproved of by very high authority. The question was, whether an action for damages can be maintained by the survivor, in a fatal duel, against any one who, in giving an account of the duel, alleges it to have been supposed accompanied by circumstances at variance with the ordinary notions of fairness or honour on such occasions? It was argued for the defendant, 'that the libel resolved itself into a charge of murder;—that there are no degrees of murder;—that there is no such thing known to the law as a "*fair*" murder; and that there can be no such distinction as a "*fair*" or a "*foul*" duel, when it ends fatally.' It was also contended, that no action for libel lies for anything written against a person touching his conduct in an illegal transaction, according to the cases of *Yrisarri v. Clement*, 3 Bing. Cas. 432, and *Hunt v. Bell*, 1 Bing. 1. The Court said, however, 'that the libel, in substance, charged that the plaintiff was guilty of murder, under circumstances of grave and malignant aggravation; and the justification states simply, that the plaintiff committed murder by killing his antagonist in a duel!' 'If the libel go further, and state something besides the murder, which is injurious to the

plaintiff's character, it is clear upon every principle of the law of libel, that that must be justified as well as the rest, or the defence fails.'—11th Common Bench Reports, pp. 128, 130."

We shall, from time to time, embellish our pages with other extracts from the Juridical parts of these excellent volumes, the style and composition of which has never been surpassed, rarely equalled.

## NOTICES OF NEW BOOKS.

*A Treatise on the Powers and Duties of Parish Vestries in Ecclesiastical Matters: being a Vestryman's Guide.* By ALFRED WILLS, of the Middle Temple, Esq., Barrister-at-Law. London: Maxwell. 1855. Pp. 255.

THIS work affords complete information on the rights and duties of Parishioners in their position as *Vestrymen*. Former publications have amply supplied the wants of *Churchwardens* in regard to their legal powers, and Mr. Wills has chiefly devoted his pages to the obligations, rights, and privileges of the parishioners in general. His volume treats—

1st. Of the vestry in general and of vestrymen, comprising—1. Introductory. 2. Of persons entitled to attend and vote at the vestry. 3. Of the number of votes.

2nd. Of the notice and place of holding the vestry.

3rd. Of the vestry meeting: viz., 1. Of the chairman. 2. Of the method of voting. 3. Of the power of adjournment and of adjourned meetings. 4. Of irregularity.

4th. Of the vestry meeting and course of business, viz., 1. Introductory. 2. Of the election of churchwardens and of their accounts and estimates. 3. Of granting a rate. 4. Of the parish clerk and sexton. 5. Of the parish books. 6. Of the vestry clerk.

5th. Of the churchwardens.

6th. Of the church-rate: viz., 1. Introductory. 2. Of the period for which the rate is to be made. 3. Of the subject-matter of a rate. 4. Of certain requisites of a rate. 5. Of the property liable to be rated. 6. Of the mode of assessment. 7. Of the form of the rate. 8. Of the confirmation of the rate. 9. Of treating.

7th. Of rates under the Church Building Acts.

8th. Of enforcing payment of rates; viz.—1. Of proceedings in the Ecclesiastical Courts. 2. Of summary proceedings before

justices of the peace, generally. 3. Of the like, against Quakers.

9th. Of Select Vestries.

10th. Of the refusal of the vestry to make a rate.

11th. Of the means of testing the validity of a rate.

The Appendix comprises the principal Statutes and Extracts from Judgments of the Court of Queen's Bench relating to Prohibition.

In the section on *Vestry Clerks*, Mr. Wills thus defines their duties, office, and emoluments; and which we extract as applicable to many of our readers:—

"The minutes are usually kept by an officer termed the vestry clerk, appointed and paid by the vestry. The office is entirely at the pleasure of the vestry; and there could be no binding agreement on their part that the office should be annual, or of any other particular kind, because the next vestry might revoke the appointment.<sup>1</sup> There is, consequently, no salary annexed to the situation;<sup>2</sup> the remuneration must depend upon the vote of each successive vestry. The vestry clerk is usually the keeper of the parish books and papers; for which he may, perhaps, have an action of detinue or trover,<sup>3</sup> though this is not certain; and the Court has refused a mandamus, either for the purpose of admitting him to his office,<sup>4</sup> or to compel a churchwarden to deliver the papers and books of the parish to him.<sup>5</sup> It would, however, probably be granted as against a stranger.<sup>6</sup>

"The Court will not compel the vestry clerk to allow another person to see, or take copies from, documents, in the parish chest, for any but parochial purposes. And where a defendant, in an action for libel, applied for a mandamus to enable him to do so, in order to justify in the action, his application was refused;<sup>7</sup> but if the vestry-book or any other document be called for by subpoena at a trial in the usual way, the clerk cannot refuse to produce it on the ground that it might criminate himself.<sup>8</sup>

<sup>1</sup> *Rex v. Croydon*, 5 T. R. 713.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Anon.*, 2 Chitt. Rep. 255. 'If they belonged to him, as annexed to his office.' Lord Ellenborough, C. J.

<sup>4</sup> *Rex v. Croydon*, 5 T. R. 513.

<sup>5</sup> *Anon.*, 2 Chitt. Rep. 255.

<sup>6</sup> *May v. Gwynne*, 4 B. & Ald. 301, 302, Abbott, C. J.; *Rex v. Croydon*, 5 T. R. 514.

<sup>7</sup> *May v. Gwynne*, 4 B. & Ald. 301.

<sup>8</sup> *Bradshaw v. Murphy*, 7 C. & P. 612. The right exists, however, in respect of matters really parochial; e.g., to inspect the minutes of the vestry at which the rate was made, when called upon to pay the rate; and the right may be enforced by mandamus. Mr. Prideaux, 6th Ed., p. 149, citing *Reg. v. Stepney*, 11 J. P. 420. Where a ratepayer applied to inspect

"The poor-rate books, however, ought to be produced at a poll, in order to show how many votes each vestryman is entitled to, and who may be disqualified to vote; and if, upon a subsequent scrutiny, the person or persons having the custody of them refuse to produce them, a mandamus will be granted to compel their production." It seems, however, that the chairman has no power to grant a scrutiny.<sup>9</sup>

## CHANCERY QUEEN'S COUNSEL.

### COURTS IN WHICH THEY PRACTISE.

THE following arrangement has been made as to the Courts in which the Queen's Counsel will practise:—

#### Master of the Rolls.

R. P. Roupell, Esq.  
E. J. Lloyd, Esq.  
Roundell Palmer, Esq.  
B. S. Follett, Esq.

#### Vice-Chancellor Kindersley.

C. T. Swanston, Esq.  
C. P. Cooper, Esq.  
J. G. Teed, Esq.  
James Campbell, Esq.  
John Bailly, Esq.  
W. B. Glasse, Esq.  
James Anderson, Esq.

#### Vice-Chancellor Stuart.

C. Temple, Esq.  
J. Walker, Esq.  
L. T. Wigram, Esq.  
James Bacon, Esq.  
R. Malins, Esq.  
W. Elmsley, Esq.  
R. D. Craig, Esq.

#### Vice-Chancellor Wood.

John Rolt, Esq.  
Thomas Chandless, Esq.  
John W. Willcock, Esq.  
W. T. S. Daniel, Esq.

parish books kept under a local act, which was silent as to inspection, the Court, though it had no power to grant the mandamus, observed, that it was wrong to withhold the books from any respectable persons claiming as the applicant did, and that the vestrymen were not intended to have a political advantage; and discharged the rule without costs. *Rex v. St. Marylebone*, 5 A. & E. 268, 276.

<sup>9</sup> *Reg. v. Lambeth*, E. T. 1839, of which a note is given by Mr. Prideaux, 6th Ed. p. 92, n. (c).

<sup>10</sup> *Rex v. Vicar of Wakefield*, 7 L. T. 227, 10 J. P. 386, cited by Mr. Prideaux, p. 92, n. (c). See ante, p. 45. As to the appointment and duties of the vestry clerk under 13 & 14 Vict. c. 57, see that act in the Appendix (sects. 6-8)."

J. G. Phillimore, Esq.

T. E. Headlam, Esq.

W. M. James, Esq.

All these gentlemen also attend the Courts of Appeal.

*Easter Term, 1855.*

## CRIMINAL LAW.

### PROPOSED RESOLUTIONS OF LORD BROUGHAM.

1. THAT it is the duty of the Government to provide effectually for the execution of the Criminal Law, by the discovery, the securing, and the prosecution of offenders.

2. That the local police establishments ought to be under the direct superintendence and control of the Government; and that the same rules should, as nearly as local circumstances will permit, be everywhere applied.

3. That the appointment of a regular constabulary force should be obligatory upon the local authorities.

4. That in addition to such regular force, a reserve force ought to be maintained of persons with moderate pay, to be called out for a short time yearly in order to be inspected and trained, and to be bound to serve when required by the magistrate.

5. That a sufficient number of stipendiary magistrates should be appointed in the other towns of considerable size, with the powers and duties of those appointed for London and Middlesex, so far as these powers and duties relate to the examination and commitment of persons charged with offences, and to the criminal jurisdiction vested in them.

6. That the prosecution of offenders should be intrusted to an officer appointed by the Government, with such number of subordinate officers as may be required for conducting prosecutions in the counties and larger towns; but that until such a measure can be adopted, it is expedient to appoint Barristers who shall advise upon and conduct the prosecutions in the Central Criminal Court, and the Courts of Quarter Session of Middlesex and Surrey.

7. That the Public Prosecutor should in all the graver cases, as the pleas of the Crown and forgery, proceed by Bill before the grand jury; but in other cases should at his discretion be allowed to proceed upon commitment by a stipendiary magistrate, without any bill found.

8. That assizes should be holden four times a year in each county, and quarter sessions so frequently and at such times relating to the Assizes as that a Court of Criminal Jurisdiction shall sit once a fortnight in each county.

9. That to equalize the business, counties may be divided and parts of different counties

united for the purposes of trial, and that persons may be tried at the option of the Public Prosecutor either in the district where the offence is alleged to have been committed or in an adjoining district.

10. That the same criminal jurisdiction should be given to Judges of the County Courts as is at present possessed by the Quarter Sessions of the Peace, that this jurisdiction should extend over the district subject to their civil jurisdiction, and that the justices of every county may be relieved from the obligation to hold sessions oftener than four times a year whensoever it shall appear that beside those four sessions and the assizes there is sufficient number of County Court Criminal Sittings to give two Criminal Courts monthly in the district.

11. That a reasonable sum for trouble and expenses should be allowed to all persons summoned to attend as petty jurors on any criminal trial.

12. That the costs of every person tried and acquitted or discharged for want of prosecution should be paid out of the county rates, on certificate of the Court before whom he was tried or brought for trial, or of the magistrate by whom he was discharged.

13. That in all prisons arrangements should, as far as possible, be made, not only for separating the untried from the convicted, but for separating different prisoners of both classes.

14. That imprisonment should as far as possible, be accompanied with the means of giving work to those who are willing to work, and whether untried or sentenced to imprisonment without hard labour; that all the earnings of the untried should belong to them, and to the convicts a portion upon their discharge.

15. That a discretion should be vested in the governors, chaplains, and other superintendents of gaols of improving the diet of convicts according to their demeanour and industry.

16. That, subject to the control of the superintendents, with the advice and consent of the chaplain, prisoners may be employed as assistant teachers in the prison.

## ADMINISTRATION OF OATHS IN CHANCERY.

WE observe that a clause has been introduced into the Bill for the "Despatch of Business in Chancery," restricting the power of administering oaths by Solicitors to their own places of business, except in cases of the sickness of the deponent, and for the attendance on whom a fee of 10s. is to be allowed.

We know not that the Solicitors can per-



sonally object to this alteration, for at present they receive only 1s. 6d. whether the oath be taken at their own offices or elsewhere within 10 miles; but we think it is a mistake to introduce this clause into a Bill for the *despatch* of business: the proposed enactment will *impede* it in many cases. Members of the Government, persons of high rank, ladies, aged persons, eminent bankers, merchants, and others (though not sick) were much accommodated by being able to swear to answers or affidavits at their own residences. There may, indeed, be deponents who are willing to testify to important facts, if called upon at home, and yet are disinclined to go out of their way. This proposed enactment, therefore, will occasion delay and inconvenience, and will, no doubt, be opposed. The law which it is thus proposed to alter was well considered on an appeal regarding the construction of the Act before the Lord Chancellor and Lord Justice Turner, and we are not aware that any inconvenience has arisen from the existing practice, to justify the alteration.

### PROFESSIONAL LISTS.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 27th March, to April 20th, 1855, both inclusive, with dates when gazetted.*

Crowdy, Henry Crowdy, and Richard Berens Bradford Hawkins, Highworth, Attorneys, Solicitors, and Conveyancers. April 10.

Josselyn, George, and Sterling Westhorp, Ipswich, Attorneys and Solicitors. April 6.

Meynell, Gerard Coke, and Edward Arthur Copleston, 3, St. Martin's Place, Attorneys and Solicitors. April 17.

Newton, William, and Worthington Thomas Gylby, jun., East Retford, Attorneys and Solicitors. April 13.

Powell, Edward Lloyd, and Cornelius Lloyd, Abergavenny, Attorneys and Solicitors. March 27.

Shoubridge, Charles John, and Thomas Charlesworth Bramley, 3, Bedford Row, Holborn, Attorneys and Solicitors. April 10.

Smith, George, and William Compton Smith, 5, Southampton Buildings, Chancery Lane, Attorneys and Solicitors. April 13.

Stenning, George, and Edward Carnell, Tonbridge, Attorneys and Solicitors. April 17.

Stone, George, and Henry Scott Turner, 42, Jermyn Street, St. James's, Attorneys and Solicitors. April 13.

Waugh, George, and Henry Sadler Mitchell, 5, Great James Street, Bedford Row. Attorneys and Solicitors. March 27.

### ADMISSION OF SOLICITORS.

THE Master of the Rolls has appointed the 8th of May, 1855, at the *Rolls Court, Chancery Lane*, at four in the afternoon, for swearing Solicitors.

Every person being desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Monday, the 7th day of May, 1855.

### NOTES OF THE WEEK.

#### COUNTY COURT COMMISSIONERS' REPORT.

THE *First* Report of the County Court Commissioners has just been printed. Numerous alterations are proposed, to which we shall speedily call the attention of our readers. A Second Report appears to be contemplated, and we presume no Bill will be introduced, until the whole matter has been laid before Parliament.

#### SELECT COMMITTEE ON BILLS OF EXCHANGE BILLS.

Sir Erskine Perry.  
The Attorney-General.  
Solicitor-General (Ireland).  
Lord Advocate.  
Mr. Walpole, Q.C.  
Mr. Keating, Q.C.  
Mr. Atherton, Q.C.  
Mr. Lowe.  
Mr. Kirk.  
Mr. Glyn.  
Mr. Muntz.  
Mr. Horsfall.  
Mr. Gurney.  
Mr. Henley.  
Mr. Hankey.

The first eight, it will be observed, are lawyers. The Committee have already met, and are proceeding without delay. They have power to call for the attendance of witnesses and the production of documents.

#### NEW MEMBERS OF PARLIAMENT.

*Edmund Antrobus*, jun., Esq., for Wilton, in the room of Charles Henry Wyndham A'Court, Esq., who has accepted the office of a Special Commissioner of Property and Income Tax.

*Joseph Christopher Ewart*, Esq., for Liverpool, in the room of the Honourable Henry Thomas Liddell, now Lord Ravensworth, summoned to the House of Peers.

*Robert Burrows*, Esq., for Cavan County, in the room of the Right Hon. Sir John Young, Bart., who has accepted the office of Lord High Commissioner of the Ionian Islands.

## LAW APPOINTMENTS.

Mr. Underwood French and Mr. Alton Francis Owen were, on the 16th April, admitted as Proctors of the Archers' Court, by virtue of rescripts from his Grace the Archbishop of Canterbury.

Mr. John Marriott Davenport, Solicitor, of Oxford, has been appointed Secretary to the Bishop of that city, in the room of Mr. John Burder, deceased.

It is said Professor Machonocie has resigned the Chair of Civil Law in the University of Glasgow, and that Sheriff Skene (Lanarkshire) has received the appointment of the Crown to that office, and that William Steele, Esq., Writer, will be the successor of Sheriff Skene.—*North British Daily Mail*.

Mr. Wilfred Tate has been appointed Assistant Clerk at Bow Street Police Office.—*Observer*.

## LAW PRIZE BY SOLICITORS OF EDINBURGH.

The Society of Solicitors before the Supreme Courts having liberally offered to the Students of the Scottish Law Class a prize of the value of ten guineas for the best essay on the law of stoppage *in transitu*, this prize has been adjudged to Mr. William J. Easton, of Perthshire. The Straton prize for the best essay on the law of mandate or agency was awarded to Mr. Robert Mailer, of Perthshire; and the prize for the best written answers to questions dictated in the class room was awarded to Mr. John Stirling Henry, of Kirriemuir.

## STAMPS ON BANKERS' DRAFTS.

A BILL has been introduced for granting stamp duties on all drafts or orders for the payment of money to the bearer on demand,

and thus abolishing the former exemption from stamp duties on such drafts or orders within 15 miles of the place where the same are issued. It does not appear that the penny stamp will operate as a receipt stamp.

## INCREASE OF INCOME TAX.

It is now proposed to increase the Income Tax at the rate of an additional 2d. in the pound, to be calculated from the 5th April last. Incomes above 150*l.* will then be charged, if the Bill should pass, at 1*s.* 4d. for every 20*s.*, or 6*l.* 13*s.* 4d. per cent.

## PRINTING COMMON LAW PLEADINGS.

The Court of Exchequer being occupied on the 25th with Cases out of the Special Paper, involving technical matter, Mr. Baron Martin suggested, that it would be a great improvement if the paper books delivered to the Judges were to be lithographed or printed, as the proceedings in Chancery now were. According to the present practice, each attorney, in a case set down for argument, delivers in two copies of the case or pleadings, called Paper Books, and which, by being differently paged, caused infinite trouble to the Bench in their attempt to follow the quotations of counsel.—From the *Morning Post*.

## ADMISSION LAST DAY OF EASTER TERM.

Selby, James A., 14, East Street, Lamb's Conduit Street; and Moor St., Chelsea; articulated to Mr. T. Selby, West Malling.

## ADDITIONAL APPLICATION TO TAKE OUT CERTIFICATE.

9th May, 1855.

Bennett, William Henry, 14, Furnival's Inn; and Sydenham.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lords Justices.

*In re Ronolds.* April 20, 1855.

## LUNATIC.—APPOINTMENT OF COMMITTEE AS TRUSTEE OF SETTLEMENT.

*The committee of the estate of a lunatic was appointed trustee of the settlement under which the lunatic was entitled, where it appeared he was well conversant with the property which was in Canada, and was the most eligible person under the circumstances.*

THIS was a petition for the appointment of the committee of the estate of a lunatic as trustee of the settlement, under which the lunatic was entitled, and for the conveyance by the sole surviving trustee of the trust property, to them as such trustees. There were three trustees originally.

Giffard in support, on the consent of all parties interested.

The Lords Justices said, that although it was very unusual to appoint a committee a trustee, yet as it appeared he was well conversant with the property, which was principally situate in Canada, and was the most eligible person, under the circumstances, the order might be taken, but with a third trustee.

*Hughes v. Paramore.* April 24, 1855.

## STATUTE OF LIMITATIONS.—ACKNOWLEDGMENT OF UNSETTLED ACCOUNT.

*A testator having various dealings with R. in respect of building transactions, signed the following memorandum:—"It is agreed that Mr. Robinson, in his general account, shall give credit to Dr. Hughes for 174*l.*, being for bricks delivered to the trustees of Park Place Chapel, Toxteth Park, in 1834."*  
*The Vice-Chancellor Stuart held that this was a sufficient acknowledgment to prevent*

*the operation of the Statute of Limitations under the 9 Geo. 4, c. 14, s. 1: On appeal, held insufficient, and the order of the Court below was varied accordingly, and an account was directed.*

THIS was an appeal from the decision of Vice-Chancellor Stuart (reported p. 245, ante.) It appeared that the testator having had various dealings with a Mr. Robinson in respect of building transactions, had in September, 1845, signed the following memorandum:—"It is agreed that Mr. Robinson, in his general account, shall give credit to Dr. Hughes for 174l., being for bricks delivered to the trustees of Park Place Chapel, Toxteth Park, in 1834." The Vice-Chancellor having allowed exceptions to the Master's report that this memorandum was insufficient to prevent the operation of the Statute of Limitations, this appeal was presented.

By the 9 Geo. 4, c. 14, s. 1, it is enacted, that "in actions of debt, or upon the case grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the said enactments, or either of them, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing, to be signed by the party chargeable thereby."

*Amphlett* and *Rose* in support of the appeal; *Wigram* and *C. Hall*, contra.

The Lords Justices said, that the memorandum did not take the case out of the Statute, and varied the Vice-Chancellor's order accordingly, and directed accounts to be taken.

#### Rolls Court.

*Davies v. Earl of Dysart.* March 8; April 20, 1855.

#### PRODUCTION OF DEEDS BY TENANT FOR LIFE TO REMAINDER-MAN.

*Held, that a party entitled to a vested interest in remainder can compel the tenant for life to produce the title-deeds to enable him to deal with the property, but only where his title is clear—and although such production is not ancillary to other relief.*

THIS bill was filed by the mortgagee from Lord Huntingtower, who claimed to be entitled in remainder, against the tenant for life, for the production of the title-deeds relating to the estates. It appeared that the defendant was tenant for life of three estates, and the production in respect of two was refused, on the ground that Lord Huntingtower was not entitled.

*R. Palmer* and *Jessel* for the plaintiff; *Lloyd* and *Tripp* for the defendant.

The Master of the Rolls said, that a party entitled to a vested remainder might compel a production by the tenant for life, to enable him

to deal with the property, although such production was not ancillary to other relief. But as it appeared the title of Lord Huntingtower to the first and second estates was not clear, his mortgagee was not entitled to a production: and in respect of the other, production had not been refused, and the plaintiff must pay the costs up to the hearing.

*Worthington v. Wigginton.* April 21, 1855.

#### ELECTION.—RECEIPT OF RENTS.—WILL.

*A testator gave his wife a life interest in certain houses, and in a sum of consols which he had previously purchased in the names of her and himself. It appeared the wife had received the rents of the houses until her death: Held, that she had thereby elected to take under the will.*

It appeared that the testator had transferred a sum of consols into the names of himself and his wife, and that by his will he afterwards gave certain houses and the consols, together with all money in the funds to his wife for life, then to his daughter for life, and if she died without children, to the plaintiff. It appeared that the wife had during her life received the rents of the houses, and the question now arose, upon exception to the Master's report, whether she had thereby elected to take under the will.

The Master of the Rolls said, that she had elected to take under the will, and the exception was therefore allowed.

#### Vice-Chancellor Kindersley.

*Russell v. Tapping.* April 23, 1855.

#### RE-ISSUE OF ORDER DISMISSING BILL FOR WANT OF PROSECUTION, WHERE LOST.

*An order obtained in May, 1846, to dismiss a bill for want of prosecution, had been drawn up and passed, but had not been entered or prosecuted, in consequence of there being no property available for costs—the plaintiff being out of the jurisdiction and an outlaw, and having assigned all his property: Upon the assignment being declared void, and the original order having been lost, the Registrar was directed to re-issue it from the note in his book.*

THIS was a motion for a direction on the Registrar to re-issue an order obtained in May, 1846, dismissing this bill for want of prosecution, and which had been drawn up and passed although not entered or prosecuted,—there being no property available for costs, in consequence of the plaintiff being out of the jurisdiction and an outlaw, and having assigned all his property. The assignment had, however, been recently declared void, and this motion was made upon the order having been lost, and it was proposed it should be re-drawn from the note in the Registrar's book.

*W. W. Cooper* in support, cited *Lawrence v. Richmond*, 1 Jac. & W. 241.

The Vice-Chancellor granted the application.

### Vice-Chancellor Stuart.

*Tucker v. Hernemann.* March 8; April 21, 1855.

EXCEPTIONS TO CHIEF CLERK'S CERTIFICATE.—ABANDONED MOTION.—COSTS.

*Certain creditors in an administration suit gave notices of motion to vary the chief clerk's certificate, but afterwards abandoned the same: Held, that the plaintiff was entitled to tax his costs, and was not limited to the 40s. under the Order of 5th August, 1818, there being affidavits filed in support.*

It appeared that certain creditors had given notices of motion to vary the chief clerk's certificate in this administration suit, but that they had afterwards abandoned the same, and tendered the plaintiff 40s. each for costs, under the order of August 5, 1818, which provides, that "if a party gives notice of motion and does not move accordingly, he shall, when no affidavit is filed, pay to the other side 40s. costs, upon production of the notice of motion; but where an affidavit is filed by either party, the party giving such notice of motion and not moving, shall pay to the other side costs, to be taxed by the Master, unless the Court itself shall direct, upon the production of the notice of motion, what sum shall be paid for costs."

*Bacon and Schomberg* for the plaintiff, contended, that he was entitled to taxed costs, as affidavits had been filed in support, and the application was in the nature of exceptions.

*Cairns* for the creditors, contra.

*Cur. ad. vult.*

The Vice-Chancellor, after consulting the other Judges said, that the plaintiff was entitled to his taxed costs of the several motions.

### Vice-Chancellor Wood.

*Sheppard v. Ozenford.* April 24, 1855.

DEMURRER TO BILL FOR WANT OF EQUITY, AFTER MOTION FOR INJUNCTION AND AFFIDAVITS FILED.

*On a motion for an injunction, the defendants filed affidavits in opposition: Held, that they had not thereby waived their right to demur to the bill for want of equity—such proceeding not being a step in the cause on their part.*

THIS was a demurrer to this bill for want of equity, and which it appeared had been filed after a motion for an injunction had been granted.

*Rolt and Baggallay*, for the plaintiff, took a preliminary objection on the ground that the defendants, by filing affidavits on the hearing of the motion against the injunction, had submitted to the equity of the bill, and waived their right to demur.

*Daniel and Toller*, contra.

The Vice-Chancellor said, that although the course might be very inconvenient, yet it could not be held that what had taken place amounted to a waiver by the defendants of their right to demur within the time limited by the orders. If the motion had originated with them, it might have been regarded as a step in the cause, but here they had in fact been brought into Court to defend themselves against an application by the defendant, and their having filed affidavits for such purpose, could not be considered as a waiver of their rights.

### Court of Queen's Bench.

*Regina v. Pratt.* April 21, 1855.

INDICTMENT UNDER GAME ACT.—TRESPASS ON LAND.—EVIDENCE.

*An indictment under the 1 & 2 Wm. 4, c. 32, s. 30, charged the appellant with committing a trespass by being in the day time on certain land, the property of B., in search of game. It appeared he was out in the highway, which was between B.'s property, with a gun, and that his dog had run into B.'s close, and started a pheasant, which the appellant shot at: Held, that the evidence supported the conviction, which was affirmed.*

ON the trial of this indictment, charging the appellant with committing a trespass, by being in the day time on certain land, the property of George Bowyer, in search of game, it appeared that he carried a gun and was walking along the public highway with his dog, when the dog ran off the road into Mr. Bowyer's land, and started a pheasant, which the appellant had fired at in crossing the road.

By the 1 & 2 Wm. 4, c. 32, s. 30, it is enacted, that "if any person whatsoever shall commit any trespass by entering or being, in the day time, upon any land in search or pursuit of game," &c., "such person shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money not exceeding 2l., as to the justice shall seem meet, together with the costs of the conviction."

*Carrington and Lawrence* in support of the conviction; *Dowdeswell* for the appellant.

The Court, after referring to the above section said, that the evidence was sufficient to support the charge, as he was bodily on the land of Mr. Bowyer by being on the highway, which clearly was his soil and freehold, notwithstanding the right of the public over it, he being the owner of the adjoining lands on both sides, and the conviction was accordingly affirmed.

*Regina v. Shrewsbury and Hereford Railway Company.* April 23, 1855.

TAXATION OF COSTS OF APPEAL TO SESSIONS AGAINST RATE BY CLERK OF THE PEACE.—WAIVER.

*Where, on the taxation before the clerk of the*

peace of the costs of an appeal to the Sessions against a rate by a railway company, they had attended by their managing clerk: Held, that they could not take an objection, on the ground of the reference for taxation to the clerk of the peace being improper.

THIS was a motion for a rule nisi to quash the order made by the Herefordshire Sessions, allowing the costs of an appeal against a rate by the above railway company. It appeared that the costs were taxed by the clerk of the peace, and that the company's managing clerk had attended the taxation.

Scotland in support, on the ground that the taxation was improperly delegated to the clerk of the peace.

The Court said, that the company, by attending the taxation, were prevented from taking the objection, whether it was good or not, and the rule would therefore be refused.

*Regina v. Newton and others.* April 23, 1855.

**ERROR FROM INDICTMENT FOR MISDEMEANOR. — ATTORNEY-GENERAL'S FIAT. — JURISDICTION. — MANDAMUS.**

Held, that this Court will not interfere with the decision of the Attorney-General on an application for his fiat for a writ of error on an indictment for a misdemeanor, where it appears he has exercised his discretion.

Where the Attorney-General refuses to hear the application altogether, a mandamus will be granted to compel such hearing.

A technical objection to an indictment, on the ground that the offence charged to be within the jurisdiction of the Central Criminal Court, was not within such jurisdiction, overruled, where it had not been taken at the trial.

Semble, the dictum of Lord Mansfield in *Rex v. Wilkes*, 4 Burr. 2551, that "in a misdemeanor, if there be probable cause, it ought not to be denied; this Court would order the Attorney-General to grant his fiat," is incorrectly reported.

THIS was a motion for a rule nisi on the Attorney-General to grant his fiat for a writ of error on this indictment at the Central Criminal Court charging the defendants with wounding with intent, &c., and on which they were found guilty of unlawfully wounding. The application to the Attorney-General for his fiat had been made on the ground that the indictment charged the offence to have been committed in the parish of Lambeth within the jurisdiction of the Central Criminal Court, whereas it was in the parish of Croydon and beyond the jurisdiction of the Court. The Attorney-General refused to grant his fiat, inasmuch as the error assigned alleged a fact in contradiction of the record.

H. J. Hodgson, in support, urged that the writ of error was *ex debito justitiæ*, citing the dictum

of Lord Mansfield, in *Rex v. Wilkes*, 4 Burr. 2,551.<sup>1</sup>

The Court said, that it was quite irrespective of the merits of the case whether the place was beyond or within the jurisdiction, and the parties had the opportunity on the trial of taking the technical objection, but had not done so. The jury had found the defendants guilty of the offence, and it would be highly prejudicial to the interests of justice to grant the present application. But irrespective of the merits of this particular case, this Court had no jurisdiction to review the decision of the Attorney-General, where he had to exercise, and had exercised, his discretion in a judicial or quasi judicial office. If the Attorney-General had altogether refused to hear the application, this Court would grant a mandamus to compel such hearing, and if he had misconducted himself he was liable to be proceeded against in the proper quarter. As to the dictum cited, Lord Mansfield had himself said Sir James Burrows' reports were not always accurate, and it was very doubtful whether it had been uttered by Lord Mansfield. The rule would therefore be refused.

#### Court of Common Pleas.

*Bennett v. Oriental and Peninsular Steam Navigation Company.* April 21, 1855.

**BILL OF EXCEPTIONS. — NON-SIGNATURE OF JUDGE. — NEW TRIAL.**

Where a bill of exceptions was not signed in consequence of the Judge being unable to attend and settle it as intended, and he afterwards was unable through ill health to undertake the matter: Held, that the arrangement having failed through the fault of none of the parties, a rule would be made absolute for a new trial.

IT appeared in this action that it had been arranged for the defendants to be at liberty to tender a bill of exceptions after a motion for a new trial on the ground of misdirection had been disposed of, and that upon the rule obtained accordingly being discharged a bill of exceptions as settled by counsel was sent to Lord Truro, who presided at the trial, to seal, but that not approving of the form of the exceptions, his lordship had stated his intention to settle them. The matter had not been attended to in consequence of his lordship's numerous engagements, and it appeared his state of health now prevented his being troubled with the matter.

Petersdorff now moved for a new trial; Prentice showed cause in the first instance.

The Court said, that as the arrangement had failed without fault on either side, it must be treated as inoperative, and the rule would therefore be made absolute for a new trial.

<sup>1</sup> "In a misdemeanor, if there be probable cause, it ought not to be denied; this Court would order the Attorney-General to grant his fiat."

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